Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of **Application by BellSouth Corporation For Authorization Under Section 271 Of The Communications Act To Provide In-Region, InterLATA Services In The States Of Georgia And Louisiana**	)	CC Docket No. 01-277

COMMENTS OF AT&T CORP.
IN OPPOSITION TO BELLSOUTH CORPORATION'S
SECTION 271 APPLICATION FOR GEORGIA AND LOUISIANA

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SECTION 271 APPLICATION FOR GEORGIA AND LOUISIANA

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these comments in opposition to the Application of BellSouth Corporation ("BellSouth") for authorization to provide in-region, interLATA services in Georgia and Louisiana ("Application").

INTRODUCTION AND SUMMARY

On October 2, 2001, BellSouth sought the authorization of this Commission to provide in-region, interLATA service in two states: Georgia and Louisiana. Although the Commission has a clear obligation "to make a separate determination of checklist compliance for each State," *Kansas/Oklahoma 271 Order* ¶ 35, BellSouth is correct in stating that the Commission should reach the same decision with respect to BellSouth's Georgia and Louisiana applications. In neither state – and, indeed, nowhere in BellSouth's region today – can competitive local exchange carriers ("CLECs") obtain the nondiscriminatory access to

BellSouth's ubiquitous network that is an absolute pre-condition to section 271 authority. That is most obvious with respect to BellSouth's fundamentally flawed operations support systems ("OSS"), which the Commission has thrice rejected as discriminatory. BellSouth has not even cured the many deficiencies the Commission identified in those prior orders. As detailed below, BellSouth falls far short of the checklist requirements in many other respects as well in both Georgia and Louisiana.

There is no question that BellSouth is *capable* of taking the steps necessary to meet the checklist requirements. Ongoing proceedings in a number of states, including, Florida and Tennessee, are pushing BellSouth in the right direction. The Georgia and Louisiana applications are simply premature. Turning a blind eye to that reality would remove the section 271 "carrot" and irreversibly undermine these pro-competitive state commission efforts. Commission approval of these premature applications would signal to BellSouth that it can now resist with impunity the efforts of the state commissions to drag it into compliance. It would also make plain to CLECs that the discriminatory environment that exists today is likely to persist, that the future improvements upon which entry plans were based are unlikely to be achieved, and that local entry plans should therefore be shelved or substantially curtailed. The Commission should instead deny both the Georgia and Louisiana applications and remind BellSouth yet again that checklist compliance *must precede* interLATA authority.

Although this is BellSouth's first application for Georgia, this is BellSouth's third try in Louisiana. The first Louisiana application – filed on the heels of a South Carolina application in which the Commission found widespread deficiencies in OSS that BellSouth claimed to be region-wide, *see South Carolina 271 Order* ¶¶ 101-181 – was so clearly deficient that the Commission summarily denied it. *Louisiana I Order* ¶ 4 ("we find that the marginal

improvements . . . do not address the major deficiencies we identified in our *BellSouth South Carolina Order*").

Rather than fix the fundamental problems with its OSS and heed the Commission's "consistent[] emphasi[s]" that BellSouth "must give its competitors nondiscriminatory access to the functions of its operations support systems," *Louisiana I Order* ¶ 20, BellSouth simply tinkered at the margins and re-filed five months later. That second Louisiana application failed even to make "a *prima facie* case," *Louisiana II Order* ¶ 91, because "major compliance problems still exist," including "BellSouth's continued failure to provide competing carriers with nondiscriminatory access to its OSS functions." *Id.* ¶ 10. *See also id.* ¶ 9 ("nondiscriminatory access to a BOC's operations support systems is crucial"). Chairman (then-Commissioner) Powell explained that the "application suffer[ed] from some of the same important deficiencies we identified in BellSouth's South Carolina and initial Louisiana applications, and thus we are compelled by the statute to reject it." *Id.*, Separate Statement of Commissioner Powell at 1. In response to this intransigence, the Commission expressly cautioned BellSouth "to remedy deficiencies identified in prior orders before filing a new section 271 application, or face the possibility of summary denial." *Id.* ¶ 5.

The Commission is now presented with yet another BellSouth application filed well before BellSouth can demonstrate that "it offers nondiscriminatory access to unbundled network elements in a manner that satisfies the statutory requirement." *Louisiana II Order* ¶ 10. That is an unfortunate, but entirely predictable product of BellSouth's anticompetitive response to the Commission's directive in *Louisiana II.* Rather than take that advice to heart and undertake the serious overhaul of its OSS that would be necessary to raise performance to nondiscriminatory levels, BellSouth instead chose to sit out the section 271 process, apparently

hoping that the checklist bar would someday be lowered. For the past three years, BellSouth has continued to make OSS improvements only at the margins. As a result, major, competition-impeding deficiencies remain – many are the very same deficiencies that the Commission warned BellSouth to fix before it filed again. As the record evidence discussed below overwhelmingly confirms, BellSouth continues, *inter alia*, to provision CLEC orders inaccurately, in discriminatory time frames, and with an excessive reliance on manual processing, to disrupt service to CLEC customers, and to discriminate against CLECs in the provision of unbundled network elements ("UNEs") in ways that directly impair CLECs' ability to compete.

Rather than comply with *Louisiana II*, BellSouth has devoted its resources to gaming performance measurement processes and disguising its OSS deficiencies. In this regard, BellSouth has refused to provide performance results for some key measures and to disaggregate results for others. It has repeatedly misstated its performance results in incomplete, error-ridden and internally inconsistent reports, and has even concededly tampered with performance measurement processes by singling out for special treatment CLEC orders BellSouth knew were being monitored by those processes. This documented misconduct casts a long shadow on BellSouth's performance claims in this proceeding. A serious examination of BellSouth's actual performance in providing network elements to CLECs demonstrates that BellSouth's OSS remain discriminatory. As before, "BellSouth's deficiencies with respect to its operational support systems preclude competing carriers from being able to compete fairly with BellSouth" and "render it noncompliant with the competitive checklist." *Louisiana I Order* ¶ 22.

Although these UNE-related OSS failures are alone sufficient to require denial of the application (and, indeed, in light of BellSouth's section 271 history, to justify summary

denial), BellSouth's latest Louisiana application is deficient in many other respects as well. BellSouth continues to discriminate against CLECs in the provision of the combination of UNEs known as the UNE Platform ("UNE-P"), unnecessarily disrupting service to far too many CLEC customers. And as BellSouth's own most recent cost filings confirm, BellSouth's Louisiana UNE rates, which are inflated with loading factor, switch cost and other assumptions that flout the Commission's TERLIC rules, grossly exceed the range of rates that would be produced by a reasonable application of those rules.

In addition, BellSouth does not satisfy Checklist Items 11 (number portability) and 12 (dialing parity). BellSouth routinely mishandles number porting in ways that put CLECs and their customers at odds, including failing to disconnect the prior BellSouth service (leaving the CLEC customers with no inbound calling capability and, often, subject to double billing) and subsequently reassigning CLEC customers' numbers to BellSouth customers. BellSouth refuses to port some numbers altogether, and CLEC customers are unable directly to dial some BellSouth business customers. BellSouth also falls far short with respect to Checklist Item 4 (loops): by BellSouth's own estimate, nearly 20 percent of its loops are unavailable for line-sharing, and, contrary to BellSouth's claims, its already sub-par "hot cut" performance has actually *declined* significantly in recent months. As shown below, BellSouth also fails to satisfy its burden with respect to Checklist Items 1 (interconnection), 6 (OS/DA) and 14 (resale).

Even apart from these myriad checklist deficiencies, authorizing BellSouth to provide interLATA services in Louisiana could not be in the public interest. Contrary to BellSouth's exaggerated and misleading claims, there is almost no real competition in Louisiana today. Indeed, close examination of the market data not only belies BellSouth's claim that Louisiana local markets "exhibit[] vibrant local competition," but firmly demonstrates that

competition is not irreversibly established in those local markets. More than a third of the CLEC lines upon which BellSouth relies involve resale. Far from being irreversible, the resale strategy is already in full reverse in Louisiana (and Georgia), with CLEC lines *declining* at a rate of 30 to 50 percent annually.

This loss is not being offset by CLECs utilizing UNEs. UNE activity is barely measurable in Louisiana. More than five years after passage of the Act, UNE purchasers have garnered less than *one* percent of the lines. More to the point, only a tiny fraction of even that small set of UNE lines serve residential customers. And the vast majority of the "other" estimated CLEC lines that BellSouth touts appear to be lines used to serve ISPs. Because BellSouth has elsewhere stressed to the Commission that CLEC service to these customers is purely the product of regulatory arbitrage unique to serving ISPs, BellSouth cannot claim here that CLECs' provision of service to those ISPs bears any relation to the openness (or, more precisely, the lack thereof) of BellSouth's local markets. Indeed, BellSouth's own data show that the percentage of residential customers served by "other" CLEC facilities-based lines does not even rise above zero until the fourth decimal point (.0005%). Nor is there any realistic prospect for improvement under current conditions – a new entrant forced to pay BellSouth's exorbitant UNE rates would lose money even before covering its retailing and other internal costs.

BellSouth is right that these "real-world facts" provide "a crucial backdrop against which the Commission should review" BellSouth's application. Application at 1. But

far from the burden-reversing (and therefore flatly unlawful)[1] "strong presumption" of checklist compliance that BellSouth advocates, *see* Application at 2, the real-world facts confirm that the Commission must take an even harder look at checklist compliance here than the especially hard look it must take at the application of *any* BOC that has not yet received section 271 authority in a single state. The very limited local competition in Louisiana reflects the uncertainty, unreliability, poor performance and high prices that BellSouth has yet to eliminate and, in many instances, has chosen deliberately to foster and perpetuate. On this record, there can be no reasoned finding that Louisiana local markets are "open," much less that "reasonable assurances exist that the market will remain open." *New York 271 Order* ¶ 428.

BellSouth attempts to mask these clear deficiencies by presenting Louisiana as a "package deal" with Georgia and focusing its comments and affidavits on Georgia, where, unlike Louisiana, the state commission has initiated third-party OSS testing and taken other steps designed to push BellSouth toward compliance with its 1996 Act obligations. But Georgia can hardly save Louisiana, because most of the same checklist deficiencies exist in Georgia. As in Louisiana, BellSouth has failed to meet its checklist burden with respect to network elements, number portability, dialing parity, loops, interconnection, OS/DA and resale. Although some UNE prices are better in Georgia than in Louisiana, the Georgia rates are nonetheless inflated by a number of serious TELRIC violations. And, as in Louisiana, BellSouth has grossly misrepresented the state of local competition. Although there is unquestionably more local competition in Georgia than in Louisiana (there could hardly be less), the relevant figures and

[1] *See, e.g., Kansas/Oklahoma 271 Order* ¶ 29 ("the BOC applicant retains at all times the ultimate burden of proof that its application satisfies all of the requirements of section 271, even if no party files comments challenging its compliance with a particular requirement").

trends do not remotely suggest that BellSouth's Georgia local markets are irreversibly open to competition.

Indeed, BellSouth's packaging of Louisiana and Georgia and its "regionality" theme – *i.e.*, that its OSS are the same throughout its region, and thus evidence from one state is relevant to OSS performance in another state – only strengthens the case against both the Louisiana and Georgia applications. BellSouth seeks to use "regionality" to plug holes in its Louisiana case with Georgia data and *vice-versa*. But if BellSouth's OSS systems are indeed the same region-wide, then the Commission must look to *all* of the evidence of BellSouth's performance, regardless of the state in which it was collected. *See South Carolina 271 Order* ¶ 100 ("evidence gathered by other state commissions is probative of BellSouth's offer of access to OSS functions in South Carolina"). Although one would hardly know it by reading BellSouth's application, the largest and most comprehensive body of evidence regarding the current performance of BellSouth's OSS comes from tests underway in Florida. And, as detailed below, no matter how one slices the Florida data, it removes any doubt that BellSouth's OSS remain harshly discriminatory. If BellSouth's claim of regionality is to mean anything, the instant application is therefore premature with respect to both Louisiana and Georgia.

Recognizing as much, BellSouth seeks to avoid any serious investigation of its compliance with the statutory checklist. A light touch is appropriate, BellSouth contends, because the local telecommunications markets in Georgia and Louisiana "are highly competitive," Application at 1, and because the Louisiana and Georgia commissions have reviewed BellSouth's compliance and found it adequate. As to the former, BellSouth, lacking useful hard data, focuses on the rosy press releases accompanying MCI WorldCom's Georgia local entry. History confirms that such hype has no predictive value. New entrants made similar

statements at the time of SBC's application for section 271 authority in Texas. But, as even the Texas commission has now been forced to recognize in the wake of disappointing local competition results following approval of that application, checklist deficiencies overlooked or simply waved away must eventually come home to roost.

Nor can the Louisiana and Georgia commission stamps of approval justify the Commission abdication that BellSouth seeks. As explained below, BellSouth misrepresents the completeness of the state proceedings, which, to date, have been far from comprehensive and, in many critical respects, are still underway. BellSouth also neglects to mention that it had no trouble obtaining similar Louisiana endorsements of each of its prior premature applications, neither of which, this Commission found, made even a *prima facie* showing. Indeed, the Louisiana commission rejected AT&T's post-*Louisiana II* request for a third-party OSS test on the ground that "the Commission has clearly confirmed on two separate occasions that BellSouth has met all requirements for their FCC 271 Application, a portion of which addresses and approves of the OSS system of BellSouth."[2] In all events, the Commission has repeatedly stressed that, regardless of the state's recommendation, the Commission "must independently evaluate whether a BOC is fulfilling the nondiscrimination requirement of section 271." *New York 271 Order* ¶ 56; *and see id.* ("the Commission is statutorily required to determine checklist compliance").

The Commission should treat this joint application as it should any application by a BOC that has not yet received section 271 authority in a single state. The Commission should independently and carefully assess the BOC's compliance with each checklist requirement with

[2] *See* Eppsteiner Decl. ¶ 23 & Exhibit 2.

the certain knowledge that the BOC will insist that all applications subsequent to the first one approved must be measured against that "anchor" state. Any other approach would only confirm that the Commission has all but abandoned the section 271 field, and, with it, any real near-term prospect for the vibrant local competition promised by the 1996 Act.

Independent and comprehensive review of BellSouth's application is particularly important given BellSouth's insistence that its OSS are region-wide – and thus that a finding of OSS compliance here is a finding of compliance region-wide. In this regard, the ongoing OSS proceedings in Florida and elsewhere provide a glimmer of hope that BellSouth will eventually be brought into compliance with its statutory obligation to provide nondiscriminatory access to OSS. But if this Commission were to overlook the existing, glaring deficiencies in those OSS on vague promises of future improvement, it would cut the legs out from under the Florida commission's pro-competitive efforts. Indeed, that much is clear from BellSouth's own response to the Georgia recommendation of approval, as BellSouth recently informed the Georgia commission that it will not, in fact, meet the future performance requirements that it supported without objection and upon which the Georgia staff expressly based its recommendation. "The issue in this proceeding is whether BellSouth is, in fact, meeting th[e checklist] requirements" *today*. *Louisiana II Order* ¶ 91. And any serious consideration of the record evidence will confirm that BellSouth's applications for both Louisiana and Georgia must be found wanting.

Accordingly, the Commission should insist that BellSouth first finish the task of fully implementing the competitive checklist. The remainder of these comments identify the most competitively significant steps that BellSouth must be required to take before it is authorized to provide interLATA services.

Part I below demonstrates that BellSouth has again failed to provide nondiscriminatory access to its OSS. Despite claims of "tremendous efforts," BellSouth has corrected only a few of the OSS problems that the Commission identified in the *Louisiana II Order*. That renders the application defective on its face. In any event, the limited commercial usage data that exist confirm that BellSouth's OSS remain discriminatory. At the outset, it must be recognized that BellSouth's reported data lack sufficient indicia of reliability, and therefore could not serve as the basis for a finding of checklist compliance even if they suggested that CLECs are receiving nondiscriminatory access. But taken at face value, BellSouth's data demonstrate that it fails to give CLECs a meaningful opportunity to compete in such competitively critical areas as flow-through, the timeliness of status notices, and service order accuracy. Nor can BellSouth make up the difference with third-party testing data, because that data only confirms the poor performance revealed in the commercial data and demonstrates beyond doubt that BellSouth's systems cannot handle commercial volumes.

Part II demonstrates that BellSouth fails to comply with Checklist Items 11 and 12. BellSouth's number portability practices are so flawed that they would be comical if the result were not so tragic for local competition. For example, BellSouth routinely assigns to its own retail customers numbers that have already been ported to CLEC customers. In addition, BellSouth's deficient number portability practices cause CLEC customers to lose inbound calling capability, to be double-billed, and to be unidentifiable to end users that use caller ID to screen calls. And in direct contravention of the Commission's rules, BellSouth markets non-portable NXX codes to its retail customers. This not only makes it virtually impossible for CLECs to compete for those customers, but is compounded with a dialing parity violation that creates a

barrier to entry to serving *any* BellSouth customers – CLEC customers *cannot call* the BellSouth customers assigned these non-portable NXX codes.

Part III shows that BellSouth does not provide nondiscriminatory access to unbundled loops. BellSouth must show that it is providing loops "in the quantities that competitors reasonably demand and at an acceptable level of quality." *New York 271 Order* ¶ 269. BellSouth cannot meet this standard, because its "hot cut" provisioning, when measured against any competitively relevant standard, is not only deficient but declining. BellSouth also fails to meet its obligation to offer unbundled access that provides CLECs a nondiscriminatory opportunity to offer advanced services over its loops. For example, BellSouth does not offer any feasible means of line sharing in situations where it has deployed a next generation digital loop carrier architecture. That is a clear violation of the Commission's rules and prevents CLECs from economically offering DSL services over a substantial percentage of BellSouth's loops. BellSouth's line splitting policies are equally discriminatory and anticompetitive. BellSouth's policy with respect to its provision of a line splitter is facially discriminatory: if BellSouth loses the voice customer to the data CLEC, BellSouth will provide the splitter, but BellSouth refuses to make exactly the same arrangement available for a new line splitting customer (*i.e.*, one that is not migrating from a BellSouth/CLEC line sharing situation). In any event, it is impossible for CLECs even to get line splitting in a commercially reasonable manner because BellSouth does not provide electronic OSS for ordering, provisioning and maintaining line splitting, in clear violation of the *Line Sharing Reconsideration Order*.

Part IV demonstrates that BellSouth has not satisfied Checklist Item 1, because it does not provide interconnection equal in quality to the interconnection it provides to itself. Rather, than cure the deficiencies the Commission found in the *Louisiana II Order*, BellSouth

has concocted a new metric that masks its deficient performance in trunk blocking. BellSouth's own reports show, however, that under traditional methods of measuring trunk blocking, competitive LECs experience far more trunk blocking than BellSouth.

Part V details additional ways in which BellSouth discriminates in the provision of UNEs and thus fails to satisfy Checklist Item 2. The cost studies upon which BellSouth's Georgia and Louisiana rates are based contain numerous TELRIC violations, including, *inter alia*, reliance on an impermissible reproduction cost approach, the use of arbitrary "loading" factors that inflate and double count costs, and a host of other clear methodological errors in the calculation of the loop and switch costs. This is not a close call. BellSouth effectively conceded that its Georgia switching rates are at least 35 percent too high in a state filing only a day before it filed these applications. BellSouth's Louisiana rates are so high that profitable statewide entry is demonstrably impossible. And the myriad TELRIC violations are confirmed by comparing BellSouth's Georgia and Louisiana switch rates, on a cost-adjusted basis, with the rates in states in which the Commission has granted section 271 applications. BellSouth also fails to provide nondiscriminatory access to UNE-P. Even at today's low volumes of CLEC orders, nearly 8 percent of AT&T's Georgia UNE-P business customers are losing service and experiencing other troubles during and after migration as a result of BellSouth's UNE-P provisioning deficiencies. It should go without saying that it is simply impossible for any new entrant to compete effectively for small business customers with this level of service disruption.

Part VI establishes that BellSouth has not satisfied Checklist Item 6. Despite the clear finding in the *Louisiana II Order* that BellSouth must provide customized OS/DA routing and may not insist that CLECs that use multiple OS/DA platforms supply individual switch-

specific line class routing codes, BellSouth requires precisely that – notwithstanding that its systems are unable even to process those codes.

Part VII demonstrates that BellSouth fails to satisfy Checklist Item 14, which requires that BellSouth fully implement the resale obligations of section 251(c)(4). In particular, BellSouth refuses to allow resale of its DSL transport service – a service that BellSouth's own witness concedes is sold at retail to consumers. But as the D.C. Circuit made clear in *ASCENT* v. *FCC*, there is no "advanced services" exception to the resale obligations of section 251(c).

In Part VIII, AT&T demonstrates why it would not serve the public interest to grant BellSouth interLATA authority in either Georgia or Louisiana at this time. BellSouth's Louisiana and Georgia local markets are not irreversibly open to competition, and that alone, forecloses any finding that the application is "consistent with the public interest, convenience and necessity." 47 U.S.C. § 271(d)(3)(C). Barely 2/10 of 1 percent of the residential lines in BellSouth's Louisiana service territories are served by CLECs via facilities- or UNE-based service. Even based on BellSouth's misleading data, there is likewise insignificant competition for residential service in Georgia – little more than 3 percent of the residential lines in BellSouth's Georgia service territory are served by facilities-based competitors, and just more than 1 percent of such lines are served by UNE-based competitors. And there is little prospect for improvement. The capital markets are now closed to CLECs and many have gone, or are going, out of business or are otherwise in severe financial distress. At the same time, barriers to entry remain high as a result of BellSouth's above-cost UNE rates, discriminatory access to OSS and UNEs, and other refusals to implement fully the Act. Moreover, BellSouth's assurances that there will be no "backsliding" are patently inadequate. The "SEEM" plans proposed by BellSouth do not provide effective performance monitoring and would result in the imposition of

only token penalties for even significant and extended violations of the Act. BellSouth would have only minimal incentives to maintain even existing levels of performance.

In sum, the Commission should not lower the bar for BellSouth on some abstract notion that it is BellSouth's "turn." BellSouth is capable of providing – and under the Act is required to provide – CLECs with far better performance and prices that more nearly approximate what BellSouth enjoys. The Commission should deny the Application.

ARGUMENT

I. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO ITS OSS (CHECKLIST ITEM 2).

Because "access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable," a BOC seeking section 271 authority must demonstrate that it provides nondiscriminatory access to OSS. *New York 271 Order* ¶ 84 & n.203. The importance of this requirement cannot be overstated. "The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition," *id.* ¶ 83, and that OSS "represent a significant potential barrier to entry." *Local Competition Order* ¶ 516. Without nondiscriminatory access to the BOC's OSS, competing carriers "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the BOC's local exchange markets. *New York 271 Order* ¶ 83 ("new entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for

network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers").

In its *Louisiana II Order*, the Commission found that there were "major deficiencies that BellSouth has not corrected in its OSS," and that "BellSouth must correct these problems in future applications." *Louisiana II Order* ¶ 91. But despite the "tremendous effort" that it claims to have made, BellSouth has corrected few of the problems that the Commission found to deny CLECs parity of access to BellSouth's OSS. Although BellSouth has made some improvements in its systems since the *Louisiana II Order*, the reality is that it has fixed only a handful of the many problems that the Commission identified. Moreover, BellSouth violates its OSS obligations in many *additional* ways that the Commission did not address – particularly in the critically important areas of change management and the test environment that BellSouth provides to CLECs.

Despite the Commission's finding that the disparity between BellSouth's own retail flow-through rate and the flow-through rate for CLECs denied parity of access, for example, BellSouth continues to place excessive reliance on manual processes that unnecessarily delay the return of order status notices and the provisioning of service to CLECs' customers. Bradbury Decl. ¶¶ 57-113; 124-141. Likewise, contrary to the *Louisiana II Order*'s directive, BellSouth still has not given CLECs the ability fully to integrate pre-ordering and ordering functionality. *Id.* ¶¶ 27-40. And CLECs still lack equivalent access to due dates and maintenance and repair functions. *Id.* ¶¶ 41-51, 157-166. These and other similar failures to respond to the *Louisiana II Order* render the Application defective on its face.

But even if BellSouth were proceeding on a blank slate, the Application would still fail to demonstrate that BellSouth "provide[s] the same access to competing carriers that it provides to itself." *Michigan 271 Order* ¶ 143. As the Commission has recognized, the most probative evidence of whether a BOC is satisfying its obligation to provide nondiscriminatory OSS is actual commercial usage. *Id.* ¶ 138. Because of the lack of any meaningful residential competition in Georgia and Louisiana, the available commercial data do not directly resolve the critical issue – whether BellSouth's OSS are providing nondiscriminatory access and can handle the level of demand that would exist in a truly competitive marketplace.

Even the limited commercial usage data that do exist, however, refute BellSouth's claim of compliance with its OSS obligations. Taken at face value, BellSouth's own data demonstrate that it fails to give CLECs a meaningful opportunity to compete in such competitively critical areas as flow-through, the timeliness of status notices, and service order accuracy. And the data plainly *over*states BellSouth's actual performance, given BellSouth's persistent changes in its data, and evidence and its admission that it has given preferential treatment to CLEC orders it knows are being monitored.

Nor can BellSouth rely on the results of third-party testing by KPMG as proof that it has met its OSS obligations. To the contrary, that incomplete test only confirms the poor performance revealed in the commercial data. Moreover, the Commission cannot, as BellSouth urges, look only at the Georgia test data. Third-party testing has likewise been undertaken, and is still ongoing, in Florida – on what BellSouth contends are "the same OSS" as those used in Georgia and Louisiana. Application at 53. In light of BellSouth's assertion that its OSS are "regional in nature," *id.* at 4, the Florida test data is at least as probative as the Georgia test data.

Indeed, the Florida test results to date are far *more* probative than the Georgia results. That is because the Florida test is being conducted with far greater independence by the tester, has the benefit of much broader and more detailed participation by affected CLECs, and, most fundamentally, has been substantially more comprehensive and rigorous than the testing conducted in Georgia. Norris Decl. ¶¶ 55-78. As a consequence, *subsequent* to the completion of the Georgia test, which BellSouth asserts it has largely (but, concededly, not completely) satisfied, the Florida test is still uncovering a substantial number of highly significant OSS deficiencies across a range of major areas of examination. *Id.* ¶ 7. In many instances, that is because Florida is testing features of BellSouth's OSS that the tests in Georgia disregarded entirely. Indeed, of the 94 open exceptions and observations in the Florida test as of October 5, 2001, fully 64 percent cover matters that were not even tested in Georgia. *Id.* ¶ 63.

By contrast, there are other instances in which the Florida test is uncovering serious deficiencies in areas that were also tested in Georgia and in which the Georgia tester pronounced itself "satisfied" with BellSouth's performance. Those instances provide useful comparisons that reveal some of the flaws in the Georgia testing procedures. For example, the five-day plan for volume testing in Florida had to be aborted *on the very first day* because multiple BellSouth interfaces failed to meet the standard at the very *lowest* level of planned volumes. Norris Decl. ¶¶ 15-21. Although the Georgia test gave BellSouth a passing grade on volume testing, even a cursory examination of the Georgia test reveals the reasons for the discrepancy. The Georgia test largely did not test the actual production environment in which real-world orders would actually be made and processed. Rather, BellSouth constructed, and the Georgia tester employed, a separate "test" environment that had substantially greater capacity than BellSouth's production environment. Norris Decl. ¶¶ 22-28. The Georgia test's theoretical

presumption that the "test" environment would mirror the real-world environment has been conclusively refuted by the Florida results, which exposed the fragility of the real-world systems that were bypassed by Georgia's version of volume testing.

Having corrected few of the problems that the Commission found to deny parity of access to its OSS, BellSouth clearly hopes that it now can demonstrate OSS compliance with a series of promises and unreliable data. Unlike other RBOCs, however, BellSouth has a demonstrated record of noncompliance with its OSS obligations and three Commission decisions describing numerous specific attributes of its OSS that deny parity of access. Given the overwhelming evidence that most of the OSS problems found in the *Louisiana II Order* remain, BellSouth cannot reasonably be found to be in compliance with the checklist.

A. BellSouth's Interfaces Fail To Provide Nondiscriminatory Access.

As noted, in the *Louisiana II Order* the Commission detailed numerous instances in which the overall design and implementation of BellSouth's OSS denied CLECs parity of access. BellSouth still fails to provide CLECs with interfaces that provide them with access to the OSS equivalent to that which BellSouth has in its retail operations.

Pre-Ordering. "Given that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that a competing carrier be able to accomplish pre-ordering activities in a manner no less efficient and responsive than the incumbent." *See Texas 271 Order* ¶ 148. BellSouth does not provide nondiscriminatory access to pre-ordering functions.

First, as was the case at the time it filed its last application with the Commission, BellSouth fails to provide CLECs the ability fully and successfully to integrate pre-ordering and

ordering functionalities. *Louisiana II Order* ¶¶ 96-103. In particular, BellSouth has refused repeated requests by CLECs to implement the functionality that would allow CLECs to "parse" customer service records ("CSRs") in connection with making local service orders.[3] Bradbury Decl. ¶¶ 27-34. Absent parsing, CLECs must manually re-enter information from a CSR into the local service order – a process that is more time-consuming, costly, and susceptible to error than would be the case if the CLEC could parse the information and populate it electronically into the local service order. *Id.* ¶ 31.[4] And it is precisely because of the inherent risk of delay and error in manual processing that BellSouth's retail operations have full parsing capability in place, enabling its customer service representatives to populate such data electronically into retail orders. Bradbury Decl. ¶ 34.[5]

Second, BellSouth continues to deny CLECs equivalent access to due dates, failing to correct the deficiencies identified in the *Louisiana II Order* (¶¶ 104-06). This is a critical competitive issue because customers expect that – like BellSouth – a CLEC will be able not only to provide service promptly, but also to be able to tell them, while they are still on the line, the date when the service will be installed. Bradbury Decl. ¶ 41. Yet despite ample time to

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[3] "Parsed" pre-ordering information is electronic data that are divided into fields which can be electronically transferred into other fields used in the pre-ordering and ordering process. *See* Bradbury Decl. ¶ 30.

[4] *See New York 271 Order* ¶ 137 (a "BOC must enable competing carriers to transfer pre-ordering information electronically to the BOC's ordering interface or to the carrier's own back office systems, *which may require 'parsing' pre-ordering information into identifiable fields*"); *Texas 271 Order* ¶ 153 ("successful parsing is . . . a necessary component of successful integration").

[5] BellSouth asserts that "BellSouth provides CLECs with CSR data that are parsed to the same extent as they are received by BellSouth's own interfaces." Stacy Aff. ¶¶ 224-225. That is incorrect, as BellSouth is well aware. Bradbury Decl. ¶¶ 38-39. BellSouth's misstatements cannot change the basic fact: BellSouth's retail operations have the capability to parse all CSR data and electronically transfer such data into an LSR without manual intervention – and CLECs do not. Bradbury Decl. ¶¶ 31-34.

fix the problem, and despite the Commission's admonition that it would "closely examine BellSouth's automatic due date calculation capability in any future application," *Louisiana II Order* ¶ 106, BellSouth *still* fails to provide CLECs with a "due date calculator" that accurately and reliably provides due dates. Instead, the calculator provides CLECs with due dates that are often erroneous and far later than those requested by the CLECs – ensuring that CLEC customers will often receive service at a later time than BellSouth's retail customers. *Id.* ¶¶ 41-46. BellSouth's contention that it has corrected the problem is belied not only by the CLECs' commercial experience, but also by BellSouth's own repeated repair efforts. *Id.* ¶¶ 48-50.[6] Equally troubling, BellSouth also has not corrected a primary cause of the inequality in due dates, as found in *Louisiana II* – BellSouth's untimely return of FOCs. *Id.* ¶ 43.

Ordering and Provisioning. The *Louisiana II Order* found that BellSouth had failed to demonstrate that it provided nondiscriminatory access to ordering and provisioning functions. *Louisiana II Order* ¶¶ 107-144. These problems have not been corrected. Most notably, BellSouth continues to place excessive reliance on manual processing that is the product of its own making. Currently, more than *25 percent* of all electronically submitted LSRs fall out for manual processing because of design decisions by BellSouth or BellSouth system errors. Bradbury Decl. ¶¶ 83-92.

[6] BellSouth's claimed "fixes" often replace one parity violation with another. For example, in eliminating a disparity in response times for CSRs, BellSouth's "fix" has precluded CLECs from viewing competitively critical information regarding master telephone numbers, the existence of pending orders, and a customer's instruction not to transfer its account to another LEC absent its consent. As a result, CLECs are relegated to utilizing manual processes (including facsimile) to obtain such information from BellSouth – if they can obtain it at all. BellSouth's retail operations, of course, continue to enjoy direct access to all such information. Bradbury Decl. ¶¶ 52-54.

The 75-percent flow-through capability of BellSouth's systems for CLEC orders is plainly a denial of nondiscriminatory access, because it is far below the nearly 100-percent flow-through capability of BellSouth's own retail operations. *Id.* ¶¶ 63, 85. BellSouth's stated reasons for its decision to design certain order types for manual processing simply do not withstand scrutiny. *Id.* ¶¶ 93-96. Moreover, BellSouth has offered no reason why it cannot eliminate system errors that result in manual fall-out, since it has clearly done so for its own retail orders. *Id.* ¶ 97.

The high rate of manual fall-out for CLEC orders clearly denies CLECs a meaningful opportunity to compete. First, because of the approximately 18 hours that it takes BellSouth to provide a FOC or rejection notice on a "partially mechanized order," a CLEC will be denied the same real-time information to order status information that any LEC needs to remain competitive. *Id.* ¶¶ 66-68. Second, because due dates are confirmed only when a FOC is assigned, BellSouth's failure to return timely FOCs on partially mechanized orders will result in later due dates for many more CLEC customers than for BellSouth's retail customers. *See id.* ¶ 69. Third, electronic LSRs that fall out for manual processing face the risk of input errors during manual processing that could lead to a different service being "ordered" than was actually requested by the CLEC or rejection of the order by BellSouth's systems – errors for which the CLEC will be blamed. *Id.* ¶¶ 70-71. Fourth, LSRs that are manually processed are more costly for both CLECs and BellSouth to generate, track, and process than LSRs that flow-through. *Id.* ¶¶ 72-73.

These consequences are realities, not mere possibilities. As before, BellSouth continues to deny parity by failing to return timely status notices. *See Louisiana II Order* ¶¶ 117-123. Despite attempts to manipulate its data regarding the timeliness of status notices,

BellSouth's own data show that its FOCs and rejection notices are not returned in a timely manner on the many electronic orders that fall out for manual processing. *Id.* ¶¶ 136-141.

These problems are compounded by BellSouth's abysmal rates of service order accuracy and provisioning accuracy. BellSouth only seeks to maintain a 70-percent rate of service order accuracy – thus creating the possibility of errors in re-entering as many as 30 percent of partially mechanized and manually submitted orders. *Id.* ¶¶ 70, 116. Its own reported performance data show that errors by its service representatives are frequent. *Id.* ¶ 115. These errors, in turn, can – and do – cause errors in provisioning. Recent testing by KPMG in Florida has shown that *almost 50 percent* of LSRs are inaccurately provisioned. *Id.* ¶¶ 154-156; Norris Decl. ¶ 30. Indeed, even the Georgia tester pronounced itself "Not Satisfied" with BellSouth's provisioning accuracy at the conclusion of that test, and stated that these failures "could potentially have a material adverse impact on a CLEC's ability to compete effectively." Norris Decl. ¶ 32. That conclusion was certainly correct, albeit understated: these problems not only inflict substantial costs on CLECs, but deny them the efficiencies that they expected to realize as a result of their substantial investments in electronic systems. *See* Bradbury Decl. ¶ 73.

The problems caused by the high rate of BellSouth-caused manual fall-out are only likely to become worse in the future, as the percentage of partially mechanized orders increases with volume. *Id.* ¶¶ 91-92. Clearly, the ever-increasing volumes of partially mechanized orders at the LCSC have caused longer return times for FOCs, later due dates for CLECs, and lengthier call answer times at the LCSC. *Id.* ¶ 91. As CLECs ramp up for mass-market entry, time intervals for the return of status notices on manually processed orders will grow longer, more errors will be made by BellSouth employees re-keying such orders, and BellSouth will be even slower in responding to CLEC inquiries about order status. *Id.* ¶ 92.

BellSouth's high rate of manual processing is particularly injurious to competition because it disproportionately impacts those interfaces – EDI and TAG – that CLECs can be expected to use for mass-market entry. *Id.* ¶¶ 88-89. Moreover, the manual fall-out rate is disproportionately higher for orders for UNEs/LNP and business resale, from which BellSouth derives more than 90 percent of its wholesale revenues from CLECs. *Id.* ¶¶ 86-87.

BellSouth's attempts to refute these realities border on the frivolous. The flow-through rates that it cites improperly absolve it of responsibility for its own system design that causes certain order types to fall out for manual processing. *Id.* ¶¶ 80-81. Yet even the rates BellSouth uses to support its application show that it is denying parity. *Id.* ¶ 82.

BellSouth's principal defense is to point to the flow-through testing conducted by KPMG in Georgia. Application at 75. Even that testing, however, fails to support BellSouth's application. BellSouth could not fully satisfy even the limited flow-through criteria used by KPMG in the Georgia test. Bradbury Decl. ¶ 105. Further, KPMG did not independently verify the accuracy of BellSouth's raw data underlying its monthly flow-through reports or ascertain whether such data support reported results. *Id.* ¶¶ 108-110.

Maintenance and Repair. BellSouth's claim that it provides nondiscriminatory access to maintenance and repair functions is remarkable, because it is simply offering the same interfaces (TAFI and ECTA) that the Commission found to deny parity to CLECs in the *Louisiana II Order*. *Louisiana II Order* ¶¶ 146-157. Neither of these interfaces gives CLECs the same capabilities that BellSouth has in connection with its retail operations. ECTA cannot provide parity, because its functionality is more limited than that of BellSouth's own retail TAFI interface – as BellSouth admits. Stacy Aff. ¶ 395; Bradbury Decl. ¶ 160. The TAFI interface

that BellSouth provides to CLECs denies them a meaningful opportunity to compete because that version of TAFI can be used only for services associated with a telephone number. Thus, for services not associated with a telephone number, CLECs would be required to submit trouble reports either manually or through a completely separate interface. Bradbury Decl. ¶ 163.

TAFI, as provided to CLECs, also denies parity of access because it cannot be integrated with the CLECs' own systems. *See* Stacy Aff. ¶¶ 49, 393 (describing TAFI as a "human-to-machine interface"); *id.* ¶ 397 (stating that TAFI "is not integrated with BellSouth's or CLECs' ordering systems"). Thus, a CLEC using TAFI will be required to input the same information from TAFI into the CLEC's own systems to update repair records, customer service records, and billing records. Although BellSouth suggests that its own TAFI retail interface is also not integrated, the evidence demonstrates that BellSouth is capable of integrating it with any of its other systems – and has done so, as determined by its business needs. *Id.* ¶ 165.

In sum, BellSouth cannot reasonably contend that its repair and maintenance interfaces provide parity of access. BellSouth can submit repair orders and obtain status electronically for all of its maintenance needs. The current interfaces for CLECs fail to support all UNEs and resale services, require substantial manual processing, or do not have the same scope of functionality as BellSouth's own repair and maintenance interface. Such deficiencies mean that repairs and maintenance will be provided to CLEC customers in a less timely and accurate manner than to BellSouth's own customers, and thus deny CLECs a meaningful opportunity to compete.

B. BellSouth Has Not Provided CLECs With The Assistance Necessary For Proper Implementation Of Its Interfaces.

Even if BellSouth had eliminated all of the aforementioned fatal flaws in its OSS today, it could not show compliance with the checklist requirements. That is because BellSouth cannot show that it is "adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them." *Michigan 271 Order* ¶ 136. Most notably, BellSouth has neither implemented nor followed an effective change control procedure. Nor has BellSouth implemented a stable test environment for CLECs.

1. BellSouth's Change Control Processes Are Patently Inadequate.

Adequate change control processes are essential to viable local competition. "Without a change management process in place, a BOC can impose substantial costs on competing carriers simply by making changes to its systems and interfaces without providing adequate testing opportunities and accurate and timely notice and documentation of the changes."[7] Thus, in determining whether a BOC has given CLECs a meaningful opportunity to compete, the Commission will give "substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time." *Texas 271 Order* ¶ 106; *New York 271 Order* ¶ 102.

BellSouth has neither established nor complied with an effective change control procedure. For example, BellSouth's change control plan not only does not give CLECs "substantial input into the design and continued operation of the change management process," it gives BellSouth the *sole* power to decide what changes shall be implemented, and when. Bradbury Decl. ¶¶ 173-200. In particular, the process gives BellSouth a "veto power" that it

[7] *New York 271 Order* ¶ 103; *Texas 271 Order* ¶ 106.

uses to deny CLECs the benefits of a fair and effective change control process ("CCP"). BellSouth decides what change requests will be granted, and what prioritization will be assigned to those CLEC change requests that it decides to support. Moreover, in contrast to such BOCs as SWBT, BellSouth has refused to agree to a "go/no go vote" procedure that would allow CLECs to decide whether to go forward with a planned release – and thereby avoid implementation of releases that have already been revealed to have problems. *See Texas 271 Order* ¶ 108.[8]

BellSouth has exploited its power under the CCP in a variety of exclusionary ways, as explained in detail in Mr. Bradbury's declaration. For example, BellSouth limits CLEC input in prioritization decisions by only rarely submitting change requests to the CLECs for prioritization. *Id.* ¶ 188. BellSouth also denies CLECs the opportunity to discuss change requests directly with the BellSouth management personnel who ultimately decide whether to implement them. *Id.* ¶ 189.

BellSouth reacts to most change requests by taking no action on them at all. *Id.* ¶ 190. BellSouth has prioritized only 65 of the 343 change requests that have been submitted (and not cancelled) during 2000 and 2001. *Id.* And even when a change request is finally prioritized, BellSouth is slow to implement it. Of 65 change requests prioritized in 2000 and 2001, only 15 have been implemented. *Id.* ¶ 191.[9] Implementation times for change requests are far too long. An average of 7 months pass after a change request has been prioritized before it is actually implemented. *Id.* ¶ 192. By contrast, for the 13 change requests that were initiated by

[8] Although BellSouth denies that it has a veto power, its own discussion of the issue acknowledges that power. Bradbury Decl. ¶ 176; *see also id.* ¶¶ 177-181 (discussing evidence). In fact, BellSouth has vetoed the vote of every contested ballot (a ballot that involves a disputed issue over changes to the change control process). *Id.* ¶¶ 177-180.

BellSouth and were *not* prioritized, the average installation interval was only 9 *weeks* – less than one-third of the installation time for prioritized change requests. *Id*.

KPMG regards the lack of meaningful CLEC input in BellSouth's change control process as such a serious problem that it has already issued two exception reports and one exception report criticizing BellSouth's internal prioritization process as exclusionary, arbitrary, and undocumented. *Id.* ¶¶ 196-200; Norris Decl. ¶¶ 35-45. To date, none of those exceptions have been closed by BellSouth. *Id.*

BellSouth's CCP is also inadequate in scope. The CCP is limited to interfaces – and does not include, for example, BellSouth's order editing or legacy systems where many CLEC-affecting changes are made. Bradbury Decl. ¶ 201. Further, despite the clear language of the CCP document, BellSouth has maintained that it does *not* consider the CCP applicable to changes that it makes in its billing systems. *Id.* ¶ 205. Indeed, BellSouth has limited the scope of the CCP by taking the position that its plans to replace many existing OSS within the next 18 months are proprietary. BellSouth kept those plans secret from CLECs until it was forced to disclose them in discovery. Bradbury Decl. ¶ 202.

2. BellSouth Fails To Provide An Adequate And Stable Test Environment.

An adequate and stable test environment is an essential prerequisite of any effective change control process. CLECs "need access to a stable testing environment to certify that their OSS will be capable of interacting smoothly and effectively with [the BOC's] OSS, as modified." *New York 271 Order* ¶ 109. Thus, under the Commission's rulings, "prior to issuing

[9] Of the remaining 50 change requests, BellSouth has not committed to an implementation date for 45 of them (73 percent of the total prioritized change requests). *Id.* ¶ 191.

a new software release or upgrade, the BOC must provide a testing environment that mirrors the production environment," so that CLECs can adequately "test the new release." *Id.* Without such a "mirror-image" environment, there is a risk that CLECs – after implementation of a new release – "may be unable to process orders accurately and unable to provision new customer services without delays." *Id.*

BellSouth's testing environment – including both its "original" test environment and its newly-minted CLEC Application Environment ("CAVE") – provides only a faint, distorted reflection of the production environment. Bradbury Decl. ¶¶ 211, 214-215. As Mr. Bradbury explains, the "original" environment is riddled with problems, including that the "original" environment is not physically segregated from the production environment, and does not mirror the production environment. *Id.* ¶¶ 210-211. These deficiencies are so glaring that KPMG concluded in its Florida testing that the "original" test environment did not constitute "an appropriate process, methodology and robust test environment for testing of the [EDI] interface."[10] As KPMG noted, this deficiency inhibits a CLEC's ability to detect deficiencies in its interface, and would impact "a CLEC's ability to develop and deliver uninterrupted service to customers."[11]

Because of these problems, BellSouth relies primarily on CAVE as a testing environment. AT&T recently conducted extensive "beta testing" of CAVE and found it deficient in numerous respects, including its failure to mirror the production environment and its unavailability for testing of both versions of EDI that AT&T uses in production. Bradbury Decl.

[10] KPMG Exception Report on Exception 6, dated November 3, 2000 (Attachment 47 to Bradbury Decl. ¶ 212; Norris Decl. ¶ 47).

[11] KPMG Exception Report on Exception 6 at 3 (Attachment 47 to Bradbury Decl.).

¶¶ 214-215. In addition, BellSouth imposes unreasonable conditions on users of CAVE, such as allowing only 10 CLECs to use CAVE and limiting the use of CAVE by CLECs to 30 days prior to, and 30 days after, BellSouth implements a software release. *Id.* ¶ 216. BellSouth clearly recognizes the deficiencies in CAVE, since it has imposed a "moratorium" on the availability of CAVE until December 10, 2001, "to provide additional functionality to mirror production." *Id.* ¶ 218.[12]

3. BellSouth Has Consistently Refused To Comply With The Change Control Process.

BellSouth's failure to provide an adequate change control process is further confirmed by its repeated and willful disregard of both the letter and the spirit of the process that is in place. Bradbury Decl. ¶¶ 228-235. For example, despite the requirement that requests for changes to the CCP itself be submitted as change requests, BellSouth has yet to submit any such change request. *Id.* ¶ 229. Similarly, in August 2000, BellSouth implemented Issue 9G of its Business Rules for Local Ordering without providing the required notice and opportunity for discussion through the CCP. *Id.* ¶ 231. Because BellSouth circumvented the CCP, CLECs were unable to make the required coding and process changes by the proposed October 2, 2000 implementation date.

Even the filing of its latest section 271 application has not deterred BellSouth from its disregard of the CMP. On October 9, 2000, BellSouth disseminated a table that summarizes changes in its Business Rules for Local Ordering (Issue 9R), to be effective

[12] Another glaring shortcoming with CAVE is that BellSouth has excluded the LENS and RoboTAG™ interfaces from CAVE. As a consequence, CLECs using these interfaces are forced to perform live testing on their customers' orders to find BellSouth's programming errors associated with new releases. *Id.* ¶ 219. The exclusion of LENS is particularly inappropriate, since LENS presently carries almost two-thirds of all CLEC requests for service.

November 9, 2001. *Id.* ¶ 235. BellSouth, however, did not issue the rules themselves, in a blatant violation of the CCP. *See also id.* ¶¶ 230, 232-233 (providing additional examples).

This real-world evidence is confirmed by KPMG's third-party testing. KPMG has issued an exception because BellSouth failed to provide notification of all system outages that occurred, and failed to send the outage notification to CLECs within the one-hour period required by the CCP – even after retesting. Bradbury Decl. ¶ 234. KPMG subsequently found that BellSouth did not provide the 30-day advance notification required by the CCP for certain changes in its Business Rules for Local Ordering. *Id.*

C. BellSouth's Performance Data and Performance Measurements Do Not Demonstrate That BellSouth Is Complying With Its OSS Obligations.

In addition to its failure to show that it has designed its systems to provide nondiscriminatory access, and to provide adequate assistance to CLECs, BellSouth cannot show through its reported performance data that it is meeting its OSS obligations. BellSouth's performance data and performance measurements are too unreliable to demonstrate that BellSouth is providing nondiscriminatory access. Bursh/Norris Decl. ¶¶ 22-29, 36-100.

BellSouth, for example, has unilaterally altered the business rules governing performance measures in ways that skew its actual performance. *Id.* ¶¶ 37, 40-68. In view of this practice, and BellSouth's "rigging" of the Georgia third-party test by artificially providing preferential treatment to CLEC orders in these states, BellSouth simply cannot be trusted to report accurate, reliable data. *Id.* ¶¶ 69. KPMG has already found serious discrepancies concerning BellSouth's metrics and data integrity problems in its Florida third-party testing – and BellSouth has not yet corrected them. *Id.* ¶¶ 28-29. The numerous errors, discrepancies and inconsistencies in BellSouth's reported performance data – and BellSouth's seemingly unending

"corrections" of them – simply confirm that the data cannot be taken at face value. Indeed, BellSouth's own application acknowledges that it has made numerous miscalculations of reported data. *Id.* ¶ 103. Because the reported data is not representative of the true population, the statistical compliance tests performed by KPMG are unreliable. *See* Bell Decl. ¶¶ 46-53. This is a classic example of garbage in, garbage out.

In addition to the error-ridden nature of its data, many of the performance measures used by BellSouth are ill-defined or otherwise fail to capture actual performance. Bursh/Norris Decl. ¶¶ 72-77. As explained in the attached declaration of Robert Bell (¶¶ 7-38), KPMG's testing methodology was flawed and could not properly detect the true level of BellSouth's failure to provide effective provisioning. Indeed, under KPMG's testing methodology there was, *a priori,* only a one in twenty chance of finding that BellSouth's service was out of compliance.[13] *See* Bell Decl. ¶ 18. This flaw in KPMG's testing methodology was compounded by the fact that, in many cases, KPMG's tests were based on aggregated data. *See id.* ¶¶ 39-45. Consequently, KPMG often found that BellSouth's performance with respect to a bundle of services/activities was satisfactory when, in fact, BellSouth's performance at the service/activity level was well below the standard for certain service types. *See id.* ¶ 39.[14] Finally, even in cases where KPMG determined that BellSouth's performance was not

[13] These odds were made even worse by KPMG's use of a military style testing (or "test until you pass") methodology. *See* Bell Decl. ¶¶ 54-59.

[14] For example, KPMG evaluated 34 orders for 2-wire loops with LNP. On those transactions, BellSouth failed to meet the Commission's standards for order clarification and error notices for either fully mechanized or partially Mechanized Orders – BellSouth completed just 8 of 14 partially mechanized orders in less than 24 hours which is far below the GPSC-approved standard of 85%. Nonetheless, because the test included summary data for partially mechanized orders across *all* services types, KPMG determined that BellSouth had satisfied GPSC's standard for timely error and clarification notices for partially mechanized orders. *See* Bell Decl. ¶ 40.

satisfactory, those statistical finding were—amazingly—reclassified as satisfactory based on "professional judgment." *See id.* ¶¶ 60-66. As a result of all of these flaws, the reported performance data cannot reasonably be regarded as an accurate measure of whether BellSouth has met the requirements of the competitive checklist. Even if taken at face value, BellSouth's reported data fail to support its application, for it shows that BellSouth falls short of providing nondiscriminatory access and fulfilling its other section 271 obligations.

II. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY LOCAL NUMBER PORTABILITY (CHECKLIST ITEM 11).

Section 271(c)(2)(B) of the Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251. 47 U.S.C. § 271(c)(2)(B)(xii). Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. § 251(b)(2). Accordingly, BellSouth must provide number portability in a manner that allows users to retain existing telephone numbers "without impairment in quality, reliability, or convenience." *Id.* The Commission's rules require that any long-term number portability method must "not result in any degradation in service quality or network reliability when customers switch carriers." 47 C.F.R. § 52.23(a)(5). BellSouth does not meet these standards, and therefore it does not satisfy this checklist item.

BellSouth fails to provide nondiscriminatory local number portability in at least three ways: (1) BellSouth's flawed implementation of local number portability causes CLEC customers to lose inbound calling and experience double billing, and allows erroneous reassignment to BellSouth customers telephone numbers that have already been ported to customers of CLECs; (2) BellSouth's failure to implement 10 digit Global Title Translation

("GTT") cause CLEC customers with ported numbers to lose the ability to have their names appear on called parties' caller identification boxes; and (3) BellSouth markets non-portable numbers from so-called "oddball" NXX codes to its retail customers. This last violation is also a dialing parity violation, because CLEC customers cannot call BellSouth customers who have been assigned numbers from oddball codes.

A. BellSouth's Implementation Of Local Number Portability Causes Customers To Lose Inbound Calling And Experience Double Billing.

AT&T is experiencing a number of significant problems connected with BellSouth's flawed and discriminatory implementation of number porting processes. These problems have a direct and adverse impact on customers and therefore constitute a significant barrier to CLECs' ability to attract and maintain customers.

For example, BellSouth's local number porting problems cause some AT&T customers to lose the ability to receive calls from BellSouth customers. The problem occurs most frequently when a business customer with a Private Branch Exchange ("PBX") has Direct Inward Dial ("DID") trunks to the PBX. When this type of customer has its numbers ported from BellSouth to AT&T or another CLEC, the customer often loses the ability to receive inbound calls from BellSouth customers that are served on the BellSouth donor switch. Berger Decl. ¶¶ 19-27.

The source of the problem is BellSouth's failure to perform translation work on its switch (where the switch cannot implement an automatic trigger) at the time the number is ported. As a result, the switch is not programmed to consult the number portability database to determine where to route the number. Instead, the switch tries to route calls to the AT&T customer within the switch even though the phone number is no longer associated with the

switch. When this happens, either the number will ring as if no one were answering the phone, or the person trying to call the AT&T customer will receive a message from the BellSouth switch that the number has been disconnected. To make matters worse, this problem is sometimes not detected immediately as the customer can make outgoing calls and receives incoming calls that are routed through switches other than the donor switch. Berger Decl. ¶ 20. BellSouth's failure to perform all of the necessary functions associated with porting on or before the due date creates substantial inconvenience for CLEC customers and, indeed, potentially endangers them, since emergency services, such as police, fire and medical services, could be unable to call the new AT&T customer until this problem is fixed. *Id.* ¶¶ 21-22.

AT&T has received numerous complaints from customers that experience this problem, and indeed, AT&T has recently received customer complaints indicating a recurrence of this problem with residential customers. *Id.* ¶ 21. The problem has been so pervasive and has such an impact on customers that AT&T has established special procedures to call BellSouth and remind it to do the necessary translation work in the switch on the due date. Although this manual work-around has reduced the incidence of the problem, it places a disparate and unlawful burden on AT&T. *Id.* ¶ 23.[15]

BellSouth's failure to perform the necessary translation work also results in customers continuing to receive bills from BellSouth after they have switched their service to AT&T or another CLEC. *See* Berger Decl. ¶ 23. In a number of instances, BellSouth has

[15] Moreover, as Ms. Berger explains (at ¶ 24), BellSouth's affiant, Mr. Milner, is simply incorrect in contending that these problems are actually AT&T's fault. *See* Milner Aff. ¶ 282. In reality, Mr. Milner is referring to a single episode, and, although AT&T did make an error in that instance, AT&T's error was clearly not responsible for its customers losing inbound calls.

continued to bill the customer improperly for months after the customer moved to AT&T. This problem also has obvious and severe negative impacts on competition.

B. BellSouth Reassigns Ported Numbers To New BellSouth Retail Customers.

BellSouth has chronic problems with the unauthorized reassignment of CLEC customers' numbers. Berger Decl. ¶¶ 13-18. In a number of instances, after BellSouth has ported a number to an AT&T customer, BellSouth has erroneously assigned the same number to a new BellSouth customer. The AT&T customer then receives calls from people who are attempting to call the new BellSouth customer, which causes confusion and inconvenience for the AT&T customer. *Id*. ¶ 16.

Despite AT&T's continual efforts to have BellSouth identify the root cause of the problem and resolve it, BellSouth has never adequately explained or cured this problem. The problem has been most common with large business customers that use PBXs – *i.e.*, the customers least likely to tolerate such disruptions. Berger Decl. ¶ 16. BellSouth concedes that the problem stems from its own internal processes – specifically, BellSouth's failure to include the proper Field Identifier ("FID") on its internal orders when it originally ports the number. When the problem occurs, customers blame it on their local service provider – the competitive LEC – even though it is BellSouth's error. *See id.* ¶ 17.

BellSouth claims that it will implement a software change to fix this problem, but concedes that it will be available (if ever) no earlier than the third quarter of 2002. *See id.* As the Commission has previously emphasized, such promises of future performance cannot meet BellSouth's burden here.

In light of BellSouth's failure to modify its system and practices to remedy this deficiency, AT&T has requested that BellSouth check its number-aging databases and remove any numbers that were ported to AT&T. BellSouth suggests that it has now checked all of AT&T's numbers and that such problems are therefore unlikely to recur (*see* Ainsworth Aff. ¶ 174). That is not true. *See* Berger Decl. ¶ 17. In any event, the convenience and reliability of CLEC customers' local service should not depend upon sporadic and error-prone manual work-arounds. BellSouth's failure to employ a consistent, automated process to guarantee that ported numbers are not improperly reassigned has a discriminatory and highly detrimental impact on competitive LEC customers and, ultimately, on competition.

In addition, BellSouth's failure to implement 10 digit Global Title Translation ("GTT") in its switches causes some customers that port their numbers to CLECs to lose the ability to have their names appear on the caller identification boxes of the recipients of their calls. Although BellSouth claims to have implemented a technical solution to this problem in Georgia and has promised to do so in Louisiana by October 2001, the problem continues to occur.

The ability to have one's name appear on the caller identification boxes of called parties is a very important feature for certain customers. *See* Berger Decl. ¶ 29. The ability to be identified on a called party's caller identification box depends upon the presence of ten-digit GTT capabilities in the network carrying the call. To date, BellSouth (unlike the other large LECs) has not implemented ten-digit GTT in the Signaling Transfer Points ("STPs") of its Signaling System 7 ("SS7") network. Instead, BellSouth provides for only six-digit GTT, which can identify the state or city where the call originated, but not the identity of the caller. *Id.* ¶ 30.

AT&T has had complaints from customers throughout the BellSouth region regarding this issue, and customers have threatened to leave AT&T if the problem is not fixed. *See* Berger Decl. ¶ 32. When AT&T requested a fix, BellSouth offered only an interim electronic solution that would have required AT&T to spend $350,000 for software upgrades that would never be used for any other purpose. AT&T ultimately filed a complaint with the Tennessee Regulatory Authority, which ruled in AT&T's favor. *See* Berger Decl. ¶¶ 32-33. As noted, however, BellSouth still has not fixed the problem.[16]

C. BellSouth Markets Non-Portable Telephone Numbers To Its Retail Business Customers.

BellSouth markets and assigns special telephone numbers from so-called "oddball" NXX codes to retail customers. This is both a dialing parity violation, because competitive LECs' customers cannot successfully call these numbers, and a number portability violation, because the numbers cannot be ported. *See* Berger Decl. ¶¶ 35-39.

These "oddball" NXX codes are a vestige of BellSouth's tenure as numbering administrator in its region, prior to the 1996 Act. In addition to the industry-recognized oddball codes, BellSouth assigned itself oddball codes for certain internal BellSouth functions, such as retail support centers, network repair, equipment repair, or testing. BellSouth currently, however, uses some of the oddball codes for customer services. These numbers allow end-users to use a single seven-digit telephone number for state-wide applications; when an end-user calls the number, BellSouth's network recognizes the number as being from one of these oddball

[16] Although Mr. Milner's testimony asserts that ten-digit GTT has been implemented in Georgia and will be implemented in Louisiana by October 12, 2001 (*see* Milner Aff. ¶ 284), the problems have continued to occur, and AT&T has resorted to having the calling party information loaded into the BellSouth database for those customers who complain. *See* Berger Decl. ¶ 34.

codes and automatically routes the call to the nearest applicable office. Berger Decl. ¶ 36. For example, a chain of pizza restaurants can market a single seven-digit number statewide for ordering pizza deliveries; when a customer calls the number, the network automatically routes the call to the restaurant closest to the customer. *Id*. ¶ 37.

BellSouth has informed AT&T that a competitive LEC's local service customers cannot complete calls to oddball codes unless the competitive LEC installs prohibitively expensive and duplicative interconnection trunking to one BellSouth end office in *each* NPA in the LATA. Berger Decl. ¶ 38. As a result, competitive LEC local service customers *cannot even call* BellSouth customers who have been assigned these oddball codes, and AT&T has lost customers because they cannot complete such calls. *Id.* This is a clear violation of the dialing parity requirement.

Nor can oddball codes be ported to competitive LECs. *See* Berger Decl. ¶ 39. This means that a BellSouth retail customer with an oddball code number would have to change its number – the number it has been advertising to its customers – if it wanted to leave BellSouth. This is a clear number portability violation. It is also a nearly insurmountable barrier to competitive LECs serving these customers that have spent resources marketing a particular phone number.

III. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO UNBUNDLED LOOPS (CHECKLIST ITEM 4).

BellSouth does not provide nondiscriminatory access to unbundled loops in several respects. To satisfy section 271(c)(2)(B)(iv), BellSouth must show that "it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors reasonably demand and at an acceptable quality." *New York 271 Order* ¶ 269.

BellSouth cannot meet this standard, because its hot cut provisioning, when measured against the standard approved by this Commission in the *New York 271 Order*, is not only deficient but declining. BellSouth also discriminates against competitive LECs in many other ways that inhibit CLECs' ability to offer advanced services. As the Commission has emphasized, the ability to provide advanced services is critically important to competitive viability in today's environment. *See, e.g., Line Sharing Order* ¶¶1-4. As explained below, however, BellSouth does not provide any feasible means of line sharing on next generation digital loop carrier ("NGDLC") loops; it maintains discriminatory policies on providing splitters for line splitting; it provides no electronic ordering for line splitting; and it maintains discriminatory policies relating to providing data services in conjunction with UNE-P. These deficiencies seriously disable new entrants from competing fairly to provide advanced services over BellSouth's loops.

A. BellSouth's Hot Cut Provisioning Performance Is Deficient.

BellSouth fails to satisfy the loop checklist item because its hot cuts provisioning performance is deficient. BellSouth's claim to the contrary, *see* Application at 100-102, relies entirely on its use of misleading and wholly inappropriate performance measures. When BellSouth's performance is instead measured by competitively relevant metrics, such as those the Commission endorsed in the *New York 271 Order*, BellSouth's performance is shown to be seriously deficient, and indeed, worsening.

BellSouth's hot cut provisioning measures are largely meaningless, because they are not designed to measure the impact of a hot cut on the *customer*. Rather, BellSouth's performance metrics measure only one part of the process – the interval from the time the BellSouth technician disconnects the customer's loop from the BellSouth switch until the

technician cross-connects the loop to the competitive LEC's equipment. *See* Berger Decl. ¶¶ 62-71. From the customer's perspective, however, what matters is not only how long the hot cut itself takes, but how long service is out and whether the cut is completed at the time scheduled.[17] To measure the impact on the customer – and thus on competition – performance metrics must therefore measure whether the hot cut was completed as scheduled, whether the FOC was issued in time to allow the CLEC to activate the number porting process and perform other essential activities in a timely manner, and whether the CLEC was notified of completion of the hot cut so it could timely port the number. Berger Decl. ¶ 68.

When BellSouth's performance is measured against that standard – as the Commission measured Bell Atlantic's performance in New York – the poor quality of BellSouth's loop provisioning performance is starkly revealed. AT&T's performance tracking data rely upon the loop cutover calculation measures endorsed by the Commission in the *New York 271 Order*. Using that measure – which much more accurately measures the impact a customer would experience from a time-specified hot cut – BellSouth's on-time performance for completing hot cuts in Georgia was only 83 percent in May 2001, and 85 percent in June 2001. In July 2001, BellSouth's performance dropped to 79 percent; and in August 2001, its performance dropped again to *72 percent*. *See* Berger Decl. ¶68. Even ignoring the steep downward trend, BellSouth's performance is well below the minimum of 90 percent that the Commission found adequate in the *New York 271 Order*.[18]

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[17] As Ms. Berger explains, BellSouth's performance is especially intolerable, because AT&T pays *extra* to have hot cuts executed at a specific time. Berger Decl. ¶ 43.

[18] In response to a request from the Justice Department, BellSouth filed some additional information on hot cut provisioning performance on October 9, 2001. In this new filing, BellSouth provides data purporting to include the time it takes to notify CLECs that a loop

B. BellSouth Maintains Discriminatory Policies That Impede Competition For Advanced Services.

The demand for advanced services has increased enormously over the last few years, and it is thus critically important that CLECs have the ability to offer digital subscriber line ("DSL") services, either singly or in combination with voice services. *See* Turner Decl. ¶ 8. Indeed, the Commission, in its recent *Line Sharing* (¶ 5) and *Line Sharing Reconsideration* (¶ 5) orders, recognized the importance of these services and made clear that incumbent LECs must provide nondiscriminatory access to unbundled loops for the provision of DSL services. BellSouth, however, maintains a number of discriminatory polices that significantly inhibit the development of competition for advanced services in Georgia and Louisiana.

1. *Refusal to Facilitate Line Sharing On NGDLC Loops.* BellSouth does not offer full unbundled access to the local loop, because it does not offer any feasible means of line sharing in situations where it has deployed next generation digital loop carrier. NGDLC allows BellSouth to deploy fiber facilities from the central office to a remote terminal, and traffic from copper loops is multiplexed onto the fiber facilities at the remote terminal. *See* Turner Decl. ¶ 9; *Line Sharing Order* ¶ 88 n.202. BellSouth is aggressively deploying NGDLC in its network, and by its own admission it has already deployed NGDLC in 19 percent of its loops. As a result, competitive LECs cannot offer DSL services over a substantial – and growing – percentage of the loops in Georgia and Louisiana.

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conversion has been completed. BellSouth's new data still do not measure the customer's experience. BellSouth's new submission shows time from hot cut *completion* to CLEC acceptance; it does not measure the interval from the due time to the notification of the CLEC. *See* Berger Decl. ¶ 69.

The term "line sharing" refers to an arrangement in which BellSouth continues to provide the voice service to an end user customer over the loop while the competitive LEC provides the data portion of the service using the high-frequency portion of the loop. *See Line Sharing Order* ¶ 4. The Commission has repeatedly recognized that competitive LECs must have unbundled access to the high frequency portion of the loop through line sharing. *See Line Sharing Order* ¶ 5; *Line Sharing Reconsideration Order* ¶ 5. Moreover, the Commission has clarified that incumbent LECs must provide line sharing even if a customer is served by an NGDLC configuration. *See Line Sharing Reconsideration Order* ¶ 10 ("the requirement to provide line sharing applies to the entire loop, even when the incumbent has deployed fiber in the loop (*e.g.*, where the loop is served by a remote terminal)"). As the Commission correctly recognized, it would be inconsistent with the goals of the Act "to permit the increased deployment of fiber-based networks by incumbent LECs to unduly inhibit the competitive provision of xDSL services." *Id.* ¶¶ 10, 13. The Commission clarified that the competitive LEC must have the option of accessing an NGDLC-equipped loop at either the central office or at the remote terminal. *Id.* ¶ 11; *see also id*. ¶ 13.

BellSouth does not comply with the Commission's mandate. First, BellSouth does not permit competitive LECs to obtain access to the entire capabilities of the unbundled NGDLC loop at the central office. Turner Decl. ¶ 11. Nor does BellSouth permit competitive LECs to obtain line sharing of NGDLC loops at the remote terminal through the installation of integrated splitter/DSLAM cards into DSLAM-capable BellSouth remote terminals. *Id*. ¶ 12.

As a result, "BellSouth is essentially maintaining its prior position that it will permit competitive LECs to engage in line sharing *only* over copper facilities, by requiring competitive LECs to collocate at the remote terminal site to access the copper portion of the

loop." Turner Decl. ¶ 13. The Commission squarely rejected such discriminatory options in the *Line Sharing Order* (at ¶ 91) and the *Line Sharing Reconsideration Order* (at ¶¶ 10-11). BellSouth's refusal to comply with the Commission's line sharing orders effectively walls off a substantial and growing percentage of the market from competition for advanced services.

2. *Discriminatory Provision of Splitters for Line Splitting.* BellSouth also maintains a discriminatory line splitting policy. Line splitting is the ability of a competitive LEC to offer both voice and advanced services, such as data, over the same telephone line to a customer. *See Line Sharing Reconsideration Order* ¶ 17. The Commission has recognized that to compete effectively with BellSouth for both voice and advanced services, UNE-P CLECs must be able to offer advanced services in conjunction with voice services. *Id.* ¶ 16. Moreover, because of the importance of advanced services, the Commission has made clear that it "expect[s] Bell Operating Companies to demonstrate, in the context of section 271 applications, that they permit line splitting, by providing access to network elements necessary for competing carriers to provide line split services." *Id.* ¶ 20 n.36.

BellSouth has not done so. Line splitting requires the use of a splitter, which is a passive electronic filter that is attached to the loop that is used to split or separate signals on the basis of their transmission frequencies. Turner Decl. ¶ 19. If BellSouth and a competitive LEC are engaged in line sharing, and BellSouth loses the voice customer to the competitive LEC, BellSouth will provide the splitter for the resulting line splitting situation. However, BellSouth refuses to make exactly the same arrangement available for a new line splitting customer (*i.e.*, one that is not migrating from a BellSouth/CLEC line sharing situation). This policy is plainly discriminatory. Indeed, since filing its section 271 application, BellSouth has suggested in state proceedings that it will reverse course on this policy and provide the splitter in all instances. *See*

Turner Decl. ¶ 15. BellSouth has not yet done so, however, and it is not even clear exactly what BellSouth's new policy would be.

BellSouth's policy of refusing to provide the splitter for new data customers is a substantial impediment to competition. Unless BellSouth provides the splitter, a competitive LEC providing a bundle of voice and advanced services to a new customer must either use its own splitter through collocation or convince the end-user to buy a second line.

3. *Unavailability of OSS For Line Splitting.* In the *Line Sharing Reconsideration Order* (¶ 20), the Commission stated that "incumbent LECs are required to make all necessary network modifications to facilitate line splitting, including providing nondiscriminatory access to OSS necessary for pre-ordering, ordering, provisioning and maintenance and repair, and billing for loops used in line splitting arrangements." BellSouth does not provide electronic operations support systems ("OSS") for ordering, provisioning and maintaining line splitting, in violation of the *Line Sharing Reconsideration Order*. *See* Turner Decl. ¶ 24. Until electronic OSS for competitive LEC line splitting is available, each and every competitive LEC customer order for bundled services must be handled manually. In the meantime, BellSouth continues to obtain new xDSL customers while AT&T and other competitive LECs who want to engage in line splitting operate at a significant disadvantage.[19]

Although the Georgia commission has ordered BellSouth to make such OSS available by January 2, 2002, it remains to be seen whether BellSouth will comply with these

[19] BellSouth has previously indicated that it anticipates winning 600,000 xDSL customers by the end of 2001. *Investigation of BellSouth Telecommunications, Inc., Provision of Unbundled Network Elements for xDSL Service Providers*, Docket No. 11900-U; Georgia Public Service Commission Hearing Transcript at 80-1.

deadlines and whether any OSS that BellSouth ultimately deploys will, in fact, provide nondiscriminatory access. BellSouth's OSS history confirms that such compliance cannot reasonably be assumed.[20]

IV. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY INTERCONNECTION (CHECKLIST ITEM 1).

Section 271(c)(2)(B)(i) requires a BOC to provide "interconnection in accordance with the requirements of section 251(c)(2) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(i). Those requirements include an obligation to provide interconnection "at least equal in quality to that provided by the local exchange carrier to itself." 47 U.S.C. § 251(c)(2). The Commission's rules implementing that provision require incumbent LECs to "design and operate its interconnection facilities to meet 'the same technical criteria and service standards' that are used for the interoffice trunks within the incumbent LEC's network," particularly trunk group blockage. *New York Order* ¶ 64. In Section 271 proceedings, the Commission has found that "disparities in trunk group blockage indicate[] a failure to provide" equal-in-quality interconnection. *Id.* (citing *Louisiana 2 Order*, 13 FCC Rcd. at 20648-51).

BellSouth has not improved its trunk blocking performance since the Commission found it deficient in the *Louisiana II Order* (¶ 77). Indeed, BellSouth's performance has *declined* since 1998. BellSouth has responded by simply inventing a new metric for measuring

[20] BellSouth also continues to engage in other anti-competitive behavior relating to line splitting. For example, BellSouth does not support UNE-P when it is part of a line splitting configuration. Turner Decl. ¶¶ 27-30. BellSouth also refuses to charge competitive LECs UNE-P rates when UNE-P is part of a line splitting arrangement. Instead, BellSouth charges the non-recurring rates for both a loop and a port, as if those elements were not combined. *Id*. ¶ 27. Furthermore, BellSouth refuses to offer splitters on a "line at a time" basis, even though state commissions in Illinois, Michigan, and Texas have already ordered splitters to be deployed on a line at a time basis. *Id*. ¶ 29. Finally, BellSouth refuses to provide advanced services to customers who elect to migrate their voice service to a CLEC. *See id.* ¶ 30.

trunk blocking that masks its deficient performance. BellSouth has established a new "Trunk Group Performance Report," which purports to measure the degree to which blocking on competitive LEC trunks exceeds blocking on BellSouth trunks by more than 0.5 percent in any given two-hour period. BellSouth's comparison, however, does not measure CLEC versus BellSouth trunk blocking at all. Under BellSouth's metric, "BellSouth" traffic is identified as traffic carried over trunks linking BellSouth end offices, while "CLEC" traffic is identified as traffic over several other categories of trunking, many of which carry predominantly *BellSouth* traffic. *See* Varner Ga. Aff. ¶ 104. As a result, the trunk blocking that CLECs experience is "lost in a sea of BellSouth traffic." McConnell/Berger Decl. ¶¶ 13-19. BellSouth's metrics effectively mask the higher rate of trunk blocking that CLECs experience.

As explained by Ms. McConnell and Ms. Berger, BellSouth's own Trunk Group Service Reports clearly demonstrate that BellSouth's performance in June, July and August of 2001 was substantially *worse* than the performance the Commission found deficient in the 1998 *Louisiana 2 Order*. In 1998, BellSouth's reports showed that as many as 4.4 percent of competitive LECs' trunk groups experienced greater than 3 percent blockage, which the Commission found unacceptable. *Louisiana 2 Order* ¶ 77 & n.218. Those same reports show that in June through August 2001, between *five* and *thirteen* percent of competitive LECs' trunk groups experienced greater than 3 percent blockage. McConnell/Berger Decl. ¶¶ 20-25. BellSouth's performance, when measured against the standard that the Commission has consistently applied in Section 271 proceedings, thus falls far short of what the Commission also already held is required for a finding of checklist compliance.

V. BELLSOUTH'S INFLATED PRICING AND DISCRIMINATORY PRACTICES WITH RESPECT TO UNE-P ALSO PRECLUDE ANY FINDING OF COMPLIANCE WITH CHECKLIST ITEM 2.

A. BellSouth's UNE Rates Are Not TELRIC Compliant.

BellSouth's Georgia and Louisiana rates are not TELRIC-compliant.[21] As demonstrated in the attached declaration of Michael Baranowski, the cost studies upon which these rates are based contain numerous TELRIC violations, including, *inter alia*, reliance on an impermissible reproduction cost approach, the use of exorbitant and unlawful loading factors that inflate and otherwise double count costs, and a host of other clear methodological errors in the calculation of the loop and switch element costs.

This is not a close call. In a state filing only one day before it filed this application, BellSouth conceded that Georgia switching costs are inflated by at least 35 percent. BellSouth's Louisiana's switch rates exceed – on a cost-adjusted basis – even the bloated Georgia switch rates. And BellSouth's Louisiana UNE rates are, on the whole, so high that profitable entry is demonstrably impossible in that state. Indeed, the per-line gross margins (before accounting for marketing, customer service and other internal costs) that are available to

[21] The United States Court of Appeals for the Eighth Circuit has held that certain of the Commission's TELRIC rules are inconsistent with the requirements of the 1996 Act. *Iowa Utils. Bd.* v. *FCC*, 219 F.3d 744 (8th Cir. 2000), *petition for cert. filed sub nom. Verizon Communications* v. *FCC*, 121 S.Ct. 877 (Oct. 4, 2000) (No. 00-511). The Eighth Circuit stayed its decision pending Supreme Court review, *see Iowa Utils. Bd.* v. *FCC*, No. 96-3321 *et al.* (8th Cir. Sept. 25, 2000); on January 22, 2001, certiorari was granted. *Verizon Communications, Inc.* v. *FCC*, 121 S.Ct. 877, (Jan 22, 2001). The Commission has held that its TELRIC rules "remain in effect" for purposes of section 271 applications filed during the period of the stay. *Massachusetts 271 Order* ¶ 17; *Kansas/Oklahoma 271 Order* ¶ 48.

potential new entrants in Louisiana are *negative* in two of the three Louisiana UNE zones and statewide, on average.[22]

On this record, there can be no reasoned finding that BellSouth's Georgia or Louisiana UNE rates fall within any range of rates that a reasonable application of TELRIC principles could have produced. And the differences between BellSouth's rates and the TELRIC-compliant range are far too large to be ignored. *See* Lieberman Decl. ¶¶ 6-27; Clarke Decl. ¶¶ 5-26.

B. BellSouth's Georgia and Louisiana Switching Rates Are Not TELRIC Compliant.

BellSouth's Georgia Application relies on switching rates that total, on average, $10.89 per line per month. *See* Lieberman Decl. ¶ 6. However, citing "continually changing" costs of materials, new technologies, and better contract terms, *see* Caldwell Aff. ¶ 122, BellSouth has now admitted that those rates are too high and has proposed, in a separate Georgia UNE pricing proceeding, rates that are 35 percent *lower* than the rates it relies on in its Application.[23] BellSouth's Application on its face therefore fails to satisfy Checklist Item 2.

The inflation of BellSouth's rates is further confirmed by a comparison of BellSouth's Georgia switch rates to those in other section 271-approved states.[24] BellSouth's

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[22] The only UNE zone where positive margins are available is zone 1, where the margin, a paltry $7.41, is not remotely sufficient to cover a potential new entrant's internal costs – *e.g.*, marketing, customer service, billing, order processing, and other operating activities.

[23] *See* Lieberman Decl. ¶ 6. BellSouth filed its newly proposed rates on October 1, 2001 – only one day before it filed its pending section 271 Application.

[24] Although the Commission has correctly noted that inter-BOC comparisons cannot be used to justify a section 271 Applicant's rates, *see, e.g., Massachusetts 271 Order* ¶ 28; *Kansas/Oklahoma 271 Order* ¶ 82, such comparisons are useful for determining whether a

Georgia switching rates exceed (on a cost-adjusted basis) those in Kansas (by 39 percent), Texas (by 18 percent), and New York (by 57 percent).[25] *See* Lieberman Decl. ¶ 9.

BellSouth's checklist deficiencies cannot be swept under the rug in the hope that they will be corrected in the new proceeding. There is no guarantee that BellSouth's TELRIC violations will be resolved in the near future, or even what the outcome of the new proceeding will be. In any event, section 271 is framed in the present tense and requires a showing that the BOC's rates comply with the checklist today.[26] As the Commission has consistently emphasized, "BOC's promises of *future* performance to address particular concerns raised by commenters have no probative value in demonstrating its *present* compliance with the requirements of Section 271." *Michigan 271 Order* ¶ 55; *see also id.* ("[p]aper promises do not, and cannot satisfy a BOC's burden of proof").[27]

Even if BellSouth could rely upon its most recent switch rate *proposals*, however, BellSouth's Application would still not satisfy Checklist Item 2 because the proposed rates also

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section 271 applicant's proposed rates are so high relative to other states that they are unlikely to be TELRIC-compliant. *See* Lieberman Decl. ¶ 9.

[25] This comparison is based on the New York recommended rates. *See* Lieberman Decl. ¶ 9 n.7.

[26] *See* 47 U.S.C. § 271(c)(2)(A) ("such company *is* providing access and interconnection . . . [that] meets the" checklist requirements) (emphasis added).

[27] Contrary to BellSouth's claims, the *Massachusetts 271 Order* does not support the proposition that a Section 271 application that contains non-TELRIC rates can be approved based on the promise of TELRIC-compliant rates being adopted in the future. Application at 41 (citing *Massachusetts 271 Order* ¶ 39). In the *Massachusetts 271 Order*, the Commission found that the rates in Verizon's application were TELRIC-compliant. *See Massachusetts Order* ¶ 27. The Commission then responded to "questions [that] have been raised regarding whether the Massachusetts Department will adopt TELRIC-based pricing on a going-forward basis." *Id.* In response, the Commission expressed its confidence that the Massachusetts commission would examine "[n]ew developments, technologies, and information" to ensure the continued implementation of TELRIC-compliant UNE rates in that state. *Id.* The Commission never

are not TELRIC-compliant. The switch rates on which its Application is premised are based on 1997 or earlier data. *See* Lieberman Decl. ¶ 7. Since then, switching costs have plummeted, a fact that the Commission has already explicitly recognized.[28] As demonstrated in the attached declaration of Michael Lieberman, the slow growth in net switch investment combined with the explosive increase in minutes has resulted in *at least* a 40 percent decline in switching investment per DEM for BellSouth in Georgia between 1996 and 2000, not the 35 percent decline BellSouth proposes. *See* Lieberman Decl. ¶ 7.

Moreover, the 1997 rates BellSouth proposes to discount were themselves grossly overstated, even by 1997 standards. For example, BellSouth's Georgia cost model relies on vastly overstated daily usage feed ("DUF") charges. *See* Lieberman Decl. ¶ 8. The DUF charge is a fee that BellSouth and some other BOCs charge CLECs for information regarding CLECs' usage. *See id.* CLECs use that information to verify the accuracy of BellSouth bills and as a basis for billing their own customers. BellSouth currently charges insupportably high recurring DUF charges that average $2.96 per line in Georgia. *See* Lieberman Decl. ¶ 8.

There is no question that BellSouth's Georgia DUF charges are vastly overstated. BellSouth itself has effectively conceded in the current and ongoing UNE pricing case in Georgia that a TELRIC-compatible DUF charge should be no higher than $1.40. *See* Lieberman Decl. ¶ 8. And even that rate is too high. Verizon's DUF charges, for example, are $0.55 in Pennsylvania and $0.20 in New York. *See id.*

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claimed that it could approve a section 271 application that did not already contain TELRIC-compliant rates based on future promises that such rates would eventually be adopted.

[28] *See, e.g.*, Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Intercarrier Compensation for ISP-*

BellSouth's Georgia switching rates are further inflated by non-TELRIC assumptions regarding switch discounts. The Commission's rules require that the rates for network elements be "based on costs that assume that wire centers will be in place at the incumbent LEC's current wire center locations, but . . . the reconstructed local network will employ the most efficient technology for reasonably foreseeable capacity requirements." *Local Competition Order* ¶ 685. All assets necessary to service demand for telecommunications in the BellSouth Georgia service territory would therefore have to be newly purchased, and any volume discounts for equipment, like switches, must be based on that assumption. It is precisely for this reason that the Commission rejected incumbent LEC arguments that "costs associated with upgrading switches" should be included in its Synthesis Model, and instead held that forward-looking switching costs should be determined using newly purchased switches efficiently sized to meet existing demand.[29]

BellSouth's cost models violated this TELRIC rule by computing switch discounts based on the assumption that there is a "*mix* of new and growth switch purchases" by BellSouth and that the "majority of switch-related purchases made by BellSouth are to support growth in existing switches." Caldwell Aff. ¶ 85 (emphasis added). That assumption grossly understates the switch discounts that should be reflected in a forward-looking cost model. BellSouth itself concedes that "[v]endors often offer substantially higher discount rates for new switch installations." *See id.* By failing to apply the correct level of switch discounts,

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Bound Traffic, CC Dockets No. 96-98 and 99-68, FCC 01-131, ¶¶ 84 n.157, 93 (rel. April 27, 2001) ("*Intercarrier Compensation Order*").

[29] Tenth Report and Order, *Federal-State Joint Board On Universal Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, ¶ 315 (rel. Nov. 2, 1999) ("*Inputs Order*").

BellSouth's Georgia switch rates are likely to be overstated by as much as 50 percent. *See* Baranowski Decl. ¶ 15.

Turning to BellSouth's Louisiana rates, no detailed examination of those rates is necessary to conclude that they are well in excess of TELRIC levels. As demonstrated in the declaration of Michael Lieberman, and in Exhibit 1 thereto, BellSouth's Louisiana switch rates exceed even the inflated Georgia rates. Moreover, after adjusting for cost differences, there is an unexplained 27 percent difference between the Louisiana rates and those BellSouth has just submitted in Georgia and claims are TELRIC-compliant. *See id.* BellSouth's Louisiana rates are also much higher than those in other BOC states in which section 271 authority has been granted. On a cost-adjusted basis, BellSouth's Louisiana switch rates exceed those of Kansas (by 31 percent), Texas (by 11 percent), and New York (by 38 percent). *See id*. ¶ 11. Moreover, as in Georgia, BellSouth's Louisiana switching rates also reflect an inflated DUF charge of $2.43. *See id.* BellSouth seeks to carry its burden of proving that its Louisiana rates are TELRIC-compliant by claiming that its Louisiana cost models are, at least, better than its Georgia cost models because its Louisiana cost models do not repeat *all* of the TELRIC violations in its Georgia cost models. *See* Application at 49-50. Although that argument provides conclusive evidence that BellSouth's Georgia cost models are flawed, it is hardly a valid defense of the Louisiana cost models, which themselves reflect critical TELRIC violations. *See* Baranowski Decl. ¶¶ 5-35.

C. BellSouth's Georgia Loop Rates Are Significantly Overstated And Are Based On Non-TELRIC Cost Models.

BellSouth's Georgia and Louisiana UNE loop rates are also significantly inflated as a result of numerous TELRIC violations. As detailed below, BellSouth's Georgia and Louisiana loop cost models fail to employ forward-looking efficient digital loop carrier systems.

In addition, the Georgia loop rates are admittedly based on an unlawful reproduction methodology, as well as vastly overstated drop loop lengths. And the Georgia loop rates are based on 1997 and earlier data, which fail to account for significant cost savings that have occurred between then and now. Finally, BellSouth's Louisiana rates rely on fill factors that are substantially understated.

Integrated Digital Loop Carrier Equipment. For the purposes of computing costs of unbundled loops, BellSouth's Georgia and Louisiana cost models assume that BellSouth's networks use *no* integrated digital loop carrier ("IDLC"). *See* Caldwell Aff. ¶ 51; GPSC 1997 Order at 47. That assumption significantly overstates BellSouth's unbundled loop costs. There is no question that IDLC equipment is far more efficient and less costly to use than universal digital loop equipment ("UDLC") because IDLC equipment is connected directly to the switching system so that digital signals from customers do not have to be converted back to analog signals. *See* Caldwell Aff. ¶ 51; *see also* Baranowski Decl. ¶¶ 19-21.

BellSouth defends its failure to use *any* IDLC equipment in computing its cost of unbundled loop on the grounds that in 1997 "IDLC loops [could not] . . . be separated from the switch" and therefore "were not suitable" for providing unbundled network elements. *See* Application at 46. That is neither true nor relevant. The relevant issue in this proceeding is whether loop rates properly account for forward-looking available technology *today*. And it is now well-established that IDLC equipment can (and should) be used in incumbents' forward-looking networks to provide both bundled and unbundled loops. *See* Baranowski Decl. ¶ 21.

The impact of this error is significant. In Georgia, the GPSC held (in the *2000 UNE Combinations Order*) that, at least with regard to loop/port combinations, BellSouth should

have accounted for the use of IDLC. The resultant rate for a UNE loop/port combination was set at $14.34. *See* 2000 GPSC Order at 20. However, using the same cost studies, BellSouth's average recurring charge for an unbundled loop and port priced separately was $18.36 ($16.51 for the loop plus $1.85 for port). *See* Baranowski Decl. ¶ 22. The only ascertainable difference between these two rates is that BellSouth does assume the use of IDLC for computing UNE loop combinations. *See id*. Thus, according to BellSouth's rates, the rate inflation caused by its failure to assume the use of IDLC for computing unbundled network elements is $4.02.[30]

Similarly, in Louisiana, the unbundled cost of a loop and a port in zone 1 is $14.42, whereas the loop/port combination price in zone 1 is only $11.77. *See* LPSC 2001 Order, Rate Attachment. Thus, according to BellSouth's rates, the rate inflation caused by its failure to assume the use of IDLC for computing unbundled network elements is $2.65. *See* Baranowski Decl. ¶ 22 n.8.

Impermissible Reproduction Approach. BellSouth essentially admits that its Georgia cost model relied on an impermissible reproduction approach to compute loop costs. The Commission's rules require that "total long-run incremental cost [TELRIC] of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers." 47 C.F.R. § 51.505(b)(1). That rule requires the "replacement cost" estimation methodology that economists and regulators have long recognized best replicates competitive market outcomes.

[30] The GPSC's 2000 UNE Combinations Order (at 20) found that adjusting BellSouth's cost model to account for 98 percent IDLC and 20 percent GR-303 (up from 44 percent IDLC and 1 percent GR-303) results in a total cost savings of $0.89.

BellSouth frankly concedes that its cost model computes many critical inputs based on a small *sample* of BellSouth's *existing* network. *See* Application at 45; Caldwell Aff. ¶ 54; *see also* GPSC 1997 Order at 34. In particular, BellSouth's Georgia loop cost model relied on a sample of Georgia loops taken by BellSouth to compute key loop characteristics such as cable routes, typical cable sheath sizes and proportions, structure mix requirements, bridge tap requirements, and feeder/distribution interface locations. *See* GPSC 1997 Order at 34. That means that all of these loop characteristics, which were used to compute BellSouth's loop rates, are based on a sample of BellSouth's *existing* network and architecture. That is a clear violation of the Commission's rules against measuring costs based on replacing an existing network.

But even if BellSouth could lawfully rely on loop characteristics from its existing network to estimate loop costs, the samples that BellSouth has relied upon are flawed. The GPSC has already pointed out that BellSouth's loop sampling methodology "excluded approximately 20 percent of [BellSouth's Georgia] loop," and that most of the loops excluded were BellSouth's shorter Georgia loops. GPSC 1997 Order at 35. "Omitting so many of these types of loops for the cost study contributed to overestimating BellSouth's loop costs." *Id.* The GPSC tried to address this plain TELRIC error by ordering BellSouth to adjust its sample results to reflect the shorter lines that BellSouth originally excluded from its cost study. *See id.* at 36. But the GPSC addressed only part of the problem.

Even assuming that the GPSC's "fix" helped to more accurately measure the length of loops in Georgia, those loop lengths are still based on BellSouth's *embedded* network and therefore are not forward-looking. Moreover, BellSouth's cost study still computes loop costs based on a flawed sampling methodology, *e.g.*, typical cable sheath sizes and proportions,

structure mix requirements, bridge tap requirements, and feeder/distribution interface locations. *See* GPSC 1997 Order at 34.

BellSouth contends that any error was harmless. First, BellSouth asserts that its sampling methodology produced shorter average cable lengths than alternative TELRIC-compatible methodologies and, therefore, claims that its sampling approach still produced least-cost loop estimates. *See* Application at 45. Second, BellSouth claims that its reproduction approach is not important because BellSouth's loop rates are lower than those produced by the competing TELRIC-compliant cost models. *See id.*

Even if BellSouth's assertion regarding loop lengths were true, that would not solve the many other problems with using an embedded methodology to compute loop characteristics. *See* Baranowski Decl. ¶ 28. As explained above, BellSouth also relied on its embedded (and flawed) sample to develop inputs for typical sheath sizes and proportions, structure mix requirements, bridge tap requirements, and feeder/distribution interface locations – loop length is only one component of that sample. *See id.* Relying on BellSouth's embedded network to compute the other factors still results in significantly overstated, non-cost-based rates in Georgia. *See id.* For example, as customer demand has expanded over time, BellSouth serves the additional demand by building out the existing route structure. *See id.* That set of piecemeal additions to an existing route, initially designed to serve a different area of demand, is not likely to use the most efficient means of serving that demand. *See id.* Yet that is the network that BellSouth's cost model sampled, and therefore, the network upon which its UNE loop rates are based.

The inefficiencies that flow from BellSouth's non-TELRIC loop sampling methodology are also apparent in that BellSouth's sample loop study, which bases cost computations on the assumption that bridge taps are used in BellSouth's network. *See* Baranowski Decl. ¶ 28. That assumption is not TELRIC-compatible. Bridge taps would not be used in a forward-looking network because of their debilitating effect upon signal and transmission quality. *See id.* Loop length is only one of many cost drivers developed by BellSouth's flawed sampling methodology. As a result, BellSouth's cost model produced radically higher rates than the other cost models that BellSouth claims estimated lower average loop lengths.[31]

BellSouth's second claim – that its reproduction approach is not important because BellSouth's loop rates are lower than those produced by the competing TELRIC-compliant cost models – is similarly misleading. In the Georgia state UNE pricing proceeding, the cost model advocated by AT&T, WorldCom and other parties, called the Hatfield Model, produced average loop rates (for 1997) of $14.33. *See* Baranowski Decl. ¶ 29. That is more than $2.00 *lower* than the average UNE loop rate of $16.51 approved by the GPSC. However, BellSouth hired an outside consulting firm to radically change the inputs used in the Hatfield Model, which resulted in increased cost estimates of over $28.00. *See id.* It is that radically changed version of the Hatfield Model – not the cost model advocated by AT&T, WorldCom and other parties – that BellSouth claims produced higher UNE loop rates than those adopted by the GPSC. *See* Madan/Dirmeier Decl. ¶¶ 3-9. Thus, BellSouth's claim that the Commission

[31] The Hatfield Model Release 3.1 relied on average loop lengths of 17,599.93 ft. (or approximately 3,500 feet shorter than that adopted by the GPSC), *see* Caldwell Decl., Exhibit GCG-3 and the Hatfield Model Release 4.0 relied on average loop lengths of 23,071 feet. *See id.* The average loop length in BellSouth's cost model – according to BellSouth was 21,012 feet.

should ignore its non-TELRIC loop sampling methodology because it produced lower rates than those advocated by other parties in the Georgia state UNE proceeding is disingenuous at best.

Declining Loop Costs. Even if (contrary to fact) BellSouth's cost models had produced TELRIC-compliant loop rates for the year in which they were calculated (1997), those rates are clearly not TELRIC-compliant today. The forward-looking unit costs of providing UNE loops have declined continuously over the past several years due to both increases in demand and improvements in technology. *See* Lieberman Decl. ¶ 7; Baranowski Decl. ¶16. BellSouth's Georgia cable and wire investment declined by 51 percent between 1996 and 2001, which strongly indicates that its loop costs have significantly declined since 1996. *See id.* BellSouth has not even attempted to adjust its rates to account for these cost declines.

Fill Factor. The BellSouth Louisiana cost study inflates UNE loop rates by assuming an unrealistically low metallic distribution fill factor of only 41 percent. The Louisiana commission provides no explanation for adopting such a low distribution fill factor. *See* LPSC 2001 Order at 9-10; *see also* Baranowski Decl. ¶ 35. Nor could it. The 41 percent fill factor is well below the fill factor used in other jurisdictions, and by the Commission in its Synthesis Cost Model. For example, the Kansas Corporation Commission directed Southwestern Bell to use a 53 percent fill factor, explaining that 53 percent "represent[s] reasonable utilization rates on a long-term forward-looking basis." KCC Inputs Order at A-27. *See also Kansas/Oklahoma 271 Order* ¶ 80 (rejecting a 30 percent fill factor and noting that the Commission has adopted fill factors ranging from 50 to 75 percent). Likewise, the New York Public Service Commission adopted a 50 percent fill factor. *See, e.g.,* Tenth Report and Order, *Federal-State Joint Board on Universal Service*, 14 FCC Rcd. 20156, App. A (1999). And the mid-point of the distribution fill factors adopted by Massachusetts is 52.5 percent.

Drop Lengths. BellSouth computed Georgia drop wire costs using an estimated length of 300 feet for buried drop wire and 200 feet for aerial drop wire. *See* Baranowski Decl. ¶ 32. BellSouth's sole support for its estimated drop lengths was a one-page, handwritten list of drop lengths for the nine states in its region. *See* Baranowski Decl. ¶ 32. Even if such a list were sufficient to correctly identify BellSouth's actual drop lengths in Georgia, those drop lengths are based on BellSouth's embedded plant. *See id.* A forward-looking methodology should at least recognize that increases in the number and proximity of residences, as well as increases in the ratio of businesses to residences, decreases drop lengths on a forward-looking basis. *See id.* The national average drop length is 73 feet. *See* Baranowski Decl. ¶ 33. Therefore, even if the average drop length in Georgia were double the national average, BellSouth's cost model assumed drops that are much too long.

D. All of BellSouth's Georgia and Louisiana Rates Are Inflated By Non-TELRIC-Compliant Loading Factors.

Even aside from the inflation to BellSouth's direct switching and loop costs caused by TELRIC errors, BellSouth's cost model further inflates those costs by applying overstated loading factors. *See* Baranowski Decl. ¶¶ 5-10. Loading factors are estimated percentages of total costs that are attributable to component costs such as company labor, engineering, and "exempt" materials. *See id.* These percentages are applied to direct cost estimates of elements to account for those costs. *See id.* The methodology used in BellSouth's cost models to compute loading factors violates TELRIC by basing those factors on BellSouth's embedded network and by double counting the costs of certain items. *See id.*

All of BellSouth's Louisiana and Georgia loading factors are based exclusively on embedded cost data and, therefore, reflect the costs of BellSouth's embedded network, rather

than the costs of an efficient forward-looking network. *See* Baranowski Decl. ¶¶ 5-10. For example, by relying on its historical experience rebuilding its embedded network, BellSouth fails to capture the labor efficiencies that would be available to a new facilities-based provider of local telephone service. These efficiencies include reduced travel times for material, personnel, and equipment because new poles would be placed sequentially (not on an *ad hoc* basis around existing plant). *See* Baranowski Decl. ¶ 6. As a result of this flawed methodology, BellSouth's Georgia and Louisiana loading factors are substantially inflated. BellSouth's loading factors for company labor, engineering and exempt materials, for example, are 42 and 13 percent for Georgia and Louisiana respectively, compared to only 6 percent in the Commission's Synthesis Model. BellSouth has offered no valid justification for this significant difference.

BellSouth's Georgia cost model also appears to double count certain items that are recovered through loading factors. *See* Baranowski Decl. ¶ 9. BellSouth's loading factors include an allowance for exempt materials – miscellaneous material items for which the unit costs are too small to warrant tracking under a separate account or sub-account. In the aerial and buried cable accounts, drops and NIDS are typically recorded as exempt materials, and BellSouth's work papers contain no adjustment to remove drop and NID cost from the exempt materials account before computing the loading factor. *See id.* But those items also appear in BellSouth's loading factors for the aerial and buried cable accounts in the field reporting code ("FRC") account designation. *See id.* Thus, it appears that both drop and NID costs are double counted within BellSouth's loop costs – once as part of the cable material load factor, and again as part of a specific cost model input to the cost study.

In addition, BellSouth's Louisiana loading factors appear to double-count inflation. *See* Baranowski Decl. ¶ 8. BellSouth's loading factors account for inflation to

material costs on a forward-going basis for three years. *See id.* At the same time, however, BellSouth's cost study adjusts its return on this material investment using the *nominal* cost of capital, which also, by definition, reflects inflation. *See id.* By accounting for inflation both in the material price (through loading factors) and again in the calculation of the return on investment, BellSouth's Louisiana cost model would appear to be double counting inflation, a clear TELRIC violation. *See id.*

E. BellSouth Does Not Make Available UNE-P On A Nondiscriminatory Basis.

Both the Commission and the DOJ have stressed that "it is critical that competitive LECs have the ability to enter the local exchange market through the use of combinations of UNEs." *Louisiana II Order* ¶ 141 (citing Department of Justice Evaluation, at 36). As with any checklist item, the BOC has the burden of demonstrating that combinations of UNEs are available "as a *legal and practical* matter." *Id.* ¶ 163 (emphasis added). Here, BellSouth has failed to make available its UNE-P service used by AT&T to serve small business customers on a nondiscriminatory and reasonable basis, and has foreclosed effective access to the UNE-P as a "practical matter."

AT&T uses UNE-P to serve small business customers. Seigler Decl. ¶¶ 4-6; 35-37. Accordingly, AT&T's success in the small business market segment relies heavily on BellSouth's prompt and reliable provision of UNE-P services to AT&T. AT&T cannot compete effectively for small business customers with its All in One[sm] service[32] until it is assured that BellSouth can offer a seamless transition to AT&T service.

[32] AT&T's All in One[sm] enables AT&T to combine local, intraLATA toll, long distance, calling card, toll free and WorldNet services into a billing plan that includes a simplified pricing structure and a discounted monthly rate. Seigler Decl. ¶ 7. This service involves the use of a

BellSouth's UNE-P offering does not even meet minimal reliability standards. Even at low levels of volumes (approximately 25 orders a day), up to 8 percent of AT&T's business customers continue to experience *outages and service disruptions* during or after migrating from BellSouth to AT&T service. As Ms. Seigler explains (¶ 7), this level of service quality makes it all but impossible for AT&T – or any CLEC – successfully to market services to small businesses using UNE-P.

Worse yet, BellSouth is using its own poor wholesale service to "win back" those few small business customers it has lost to CLECs using UNE-P. *Id.* ¶ 55. BellSouth representatives have been specifically targeting CLEC customers that experience service disruptions caused by BellSouth, in some instances telling the customer that the loss of dial tone or service problem is the CLEC's fault. This is the epitome of discriminatory and anticompetitive conduct by BellSouth and puts to rest any notion that BellSouth has provided reasonable access to UNE-P.

The reasons why BellSouth's UNE-P service is so poor are obvious to CLECs and evident to BellSouth. A system design error by BellSouth has caused AT&T customers to lose dial tone and experience service problems (*e.g.*, noise on the line) – problems that make it impossible to offer services of the quality demanded by small business customers. Seigler Decl. ¶¶ 35-69. BellSouth uses two separate orders to transfer a customer to a CLEC's UNE-P service: a "D" order to disconnect the customer's BellSouth service, and an "N" order to migrate the service to the CLEC. Failure to process these orders in the proper sequence – which happens all

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combination of BellSouth's port and switching functionality, interoffice transport, and a voice-grade loop to provide local service, along with various AT&T facilities to provide the intraLATA, toll free, long distance, and Internet access services.

too frequently – leads to disruption of the customer's service. And if, as is often the case, there is imperfect human coordination of the two orders, the customer can lose dial tone (*e.g.*, when the "D" order is worked in advance of the "N" order). *See id.* ¶¶ 17, 40.

Similarly, in the case of a customer who signs up for service and then changes his mind and cancels the migration order, if a supplement to cancel the migration is not processed in time to stop the "D" order, the customer will lose dial tone. Also, because of poor coordination by BellSouth, a customer who cancels its migration could nevertheless be transferred if the "N" order is worked prior to BellSouth's processing of the supplement canceling the order. Such problems with supplements occur with regularity because they are processed manually and are subject to the higher rate of errors associated with manual handling. *Id.* ¶¶ 40-50.

AT&T and other CLECs have raised the problems associated with the separate "D" and "N" issues for more than a year, but BellSouth failed to take any action on the issue until this summer, when it announced at a UNE-P Users' Group meeting that it would "study" the possible adoption of a single "C" order (a change order) to migrate the customer with a software command and no change in the customer's existing facilities. *Id.* ¶¶ 46-51. At its September 27, 2001 meeting, the Georgia Public Service Commission ordered BellSouth to implement such a "C" order by January 5, 2002, but BellSouth has since stated that it will not be in a position to eliminate this barrier to competition until April 2002 *at the earliest*. In the meantime, CLEC customers will continue to experience outages and will hold AT&T responsible for such outages. The end result will be that BellSouth will be able to use its own deficiencies to "win back" these customers. Rewarding BellSouth with interLATA relief now will only encourage further foot-dragging.

In addition to the loss of dial tone, AT&T customers also have experienced service disruptions such as ordered features that do not work and noise and other problems on lines after migration. In the case of missing features, these service disruptions have occurred because BellSouth's OSS systems did not include all of the requested features on the order, or did not provision the requested features when the order was filled. Failure to include an ordered feature such as call waiting, hunting (to allow the call to ring on different phone lines in the same business), or caller ID can be a significant commercial problem for a small business and can have serious financial consequences. If an ordered feature is not available to the business, that business will blame AT&T. *Id.* ¶¶ 52-55.

BellSouth's use of separate "N" and "D" orders can also give rise to additional service problems. If the handling of the "D" and "N" orders is not coordinated, then the "D" order may remove the customer from the customer's existing facilities on the port and the "N" order may place the customer on different facilities. The quality of those facilities may differ, and as a result, the customer may experience noise on the line or other problems associated with use of the different facilities. Any decrease in service quality is blamed on the CLEC even though BellSouth's practices are responsible for the problem. *Id.* ¶ 54.

On top of these design deficiencies, BellSouth's OSS systems simply are not sufficiently stable or robust to handle commercial levels of order volumes on a timely and accurate basis. As Ms. Seigler explains (¶¶ 56-61), BellSouth's OSS continue to cause customer outages and service disruptions in this context because of (i) poor rates of flow-through of orders through the electronic systems; (ii) high error rates by BellSouth service representatives on orders that fell out of the computerized systems and required manual processing; (iii) significant numbers (ranging from one half to two thirds) of orders that were erroneously rejected by

BellSouth; and (iv) frequent system outages, including 193 separate outages (for periods ranging from 3 minutes to 5 days) of the interface that allows AT&T to access customer service records.

In sum, AT&T cannot compete for business customers so long as BellSouth continues to cause significant numbers of those customers to suffer unacceptable penalties – loss of dial tone or other service disruptions. The telephone is a business' economic lifeline, and business customers do not tolerate such outages and service disruptions. Even a seemingly low percentage of outages will permanently damage a CLEC's ability to win and retain customers. BellSouth must first implement the "C" order mandated by the state commission and dramatically improve its OSS before it can satisfy section 271's nondiscrimination requirements for unbundled network elements.

VI. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO CUSTOMIZED ROUTING FOR OPERATOR SERVICES AND DIRECTORY ASSISTANCE (CHECKLIST ITEM 6).

BellSouth does not satisfy Checklist Item 6, because it does not provide nondiscriminatory customized routing for operator services and directory assistance (OS/DA). As the Commission has long recognized, incumbent LECs must provide customized routing as part of the switching function, unless they can prove that customized routing in a particular switch is not technically feasible. *Local Competition Order* ¶ 418; *see* Application at 118-20. Moreover, the Commission has stressed that "the mere fact that a BOC has 'offered' to provide checklist items will not suffice" to establish compliance with the competitive checklist; instead, the "BOC must have a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item." *Michigan 271 Order* ¶ 110. BellSouth does not comply with these requirements in two important respects: (1) in violation of the *Louisiana II Order*,

BellSouth does not have appropriate electronic ordering processes for competitive LECs that want more than one OS/DA routing option; and (2) BellSouth's OS/DA branding provides fewer options for competitive LEC customers than BellSouth customers receive when they call BellSouth's OS/DA.

First, BellSouth does not provide electronic ordering for customized routing in accordance with the Commission's orders. The Commission has made clear that BellSouth must allow competitive LECs to take advantage of multiple OS/DA platforms and routing options. Moreover, the Commission specifically instructed BellSouth to modify its ordering processes to allow a competitive LEC to use a single routing code across the region for each routing option (as opposed to requiring the competitive LEC to use individual line class codes specific to the particular BellSouth switch serving the customer). *See Louisiana II Order* ¶ 224 & nn.705-06 ("[i]f . . . a competitive LEC has more than one set of routing instructions for its customers, it seems reasonable and necessary for BellSouth to require the competitive LEC to include in its order an indicator that will inform BellSouth which selective routing pattern to use," but "BellSouth should not require the competitive LEC to provide the actual line class codes"). Under the Commission's unambiguous ruling, CLECs are free to select more than one OS/DA routing option, and BellSouth may not require the CLEC to provide actual line class codes in order to obtain the requested OS/DA routing if BellSouth is capable of accepting a single code, or indicator, on a region-wide basis. BellSouth witnesses have testified that BellSouth is quite capable of accepting a single region-wide code, or indicator, for each of the OS/DA routings that may be requested by a CLEC. Bradbury Decl. ¶¶ 278-279.

BellSouth's current practice, however, is that a competitive LEC that wishes to route the OS/DA calls of some customers to one platform and other customers to a different

platform must, in each order, identify a yet-to-be-determined line class code. Bradbury Decl. ¶ 280. BellSouth's practice is directly contrary to the Commission's mandate in *Louisiana II*. Moreover, orders that contained such an identifier would fall out to manual processing, because BellSouth's systems evidently cannot process such line class codes. Thus, a competitive LEC order for customized routing must go through two *manual* translations – the competitive LEC representative must translate the customer request into a line class code, and then the LCSC representative must translate the line class code into a SOCS-compatible format. *Id*. This is clearly unacceptable and inconsistent with the *Louisiana II Order.*

In July 2001, BellSouth and AT&T agreed in principle to contract language that will allow AT&T to use region-wide unique indicators to identify its choice of OS/DA routing option. Bradbury Decl. ¶ 283. Until BellSouth implements these changes – and it has not done so to date – BellSouth can not be said to have satisfied the requirements of section 271. *See, e.g.*, *Michigan 271 Order* ¶ 55.

Second, BellSouth does not provide AT&T's customers with call routing options that are equivalent to those BellSouth provides to its retail customers. BellSouth has designed and implemented Originating Line Number Screening ("OLNS") technology as an alternative for routing competitive LEC OS/DA calls to BellSouth's own platform and providing those calls either "unbranded" or with competitive-LEC-specific branding. AT&T has purchased OLNS for use in conjunction with its UNE-P business market entry. Bradbury Decl. ¶ 285. Although BellSouth has made the OLNS platform available to AT&T, its provision of that routing platform is highly discriminatory.

When BellSouth's retail customers dial "0," they are greeted with the BellSouth brand and are provided with a menu of four options. By picking one of the options, the BellSouth customer can choose to place a call, or to have its call automatically routed to BellSouth's residence service and repair, business service and repair, or to a BellSouth operator. In contrast, when AT&T's UNE-P business customers dial "0," they are greeted with the AT&T brand, but are provided a menu of only two options. AT&T's customers can choose to place a call, or have the call routed to BellSouth's operator (branded as AT&T). AT&T's customers, however, are not provided the options of having their calls automatically routed to AT&T's residence or business service and repair. Instead, AT&T's customers either have to look up the number and then dial it (which is much less convenient than just pressing "2" or "3"), or they have to call the operator and have the operator connect them (which is also much slower and results in an additional charge to AT&T). Thus, BellSouth provides its retail customers with access to OS/DA service that is superior to the OS/DA service that BellSouth makes available to competitive LECs and their customers. *See* Bradbury Decl. ¶¶ 286-290.

VII. BELLSOUTH HAS NOT COMPLIED WITH THE REQUIREMENTS OF SECTION 251(C) WITH RESPECT TO THE RESALE OF ADVANCED SERVICES (CHECKLIST ITEM 14).

Checklist item fourteen requires that BellSouth fully implement the resale obligations of section 251(c)(4), which extend to the resale of advanced services. 47 U.S.C. § 271(c)(2)(B)(xiv). BellSouth, however, fails to offers DSL transport services for resale at a wholesale discount, as required by section 251(c)(4). BellSouth's claim that it does not offer such services at "retail" appears to rest on the notion that BellSouth provides only limited retail DSL service to end-user customers. There can be no doubt, however, that BellSouth provides DSL services "at retail to subscribers who are not telecommunications carriers." *See* 47 U.S.C.

§ 251(c)(4); *see also Association of Communications Enterprises* v. *FCC*, 235 F.3d 662, 668 (D.C. Cir. 2001) ("*ASCENT*") ("Congress did not treat advanced services differently from other telecommunications services").

Indeed, BellSouth concedes as much in the Fogle Affidavit. As Mr. Fogle states, "*any* [network service provider], including a corporation or governmental entity, can purchase Residential Class DSL from the BellSouth tariff as long as it meets the requirements of the tariff." Fogle Aff. ¶ 10. As Mr. Fogle concedes (*id.*), "[a] very small percentage of the provisioned circuits have been purchased by an entity other than an ISP, CLEC or IXC." He further concedes that "[l]arge corporations and government entities have expressed a limited interest in purchasing BellSouth's Business Class DSL," and indeed, "[i]n the past, BST has had some passing references in sales collateral, and on web sites regarding the availability of Business Class DSL for business end-users."

Under the *Second Advanced Services Order*, BellSouth must offer stand-alone DSL Transport for resale at a wholesale discount, since it unmistakably does at retail to end-users.[33] Because BellSouth has not shown that it is making those services for resale at a wholesale discount, it cannot show that it has met the requirements of the checklist. *See Second Advanced Services Order* ¶¶ 17-18.[34]

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[33] *See Second Advanced Services Order* ¶ 3 ("advanced services sold at retail by incumbent LECs to residential and business end-users are subject to the section 251(c)(4) discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service").

[34] Recognizing that this activity requires BellSouth to resell these services pursuant to section 251(c)(4), BellSouth attempts to evade this result by vowing that "BST will not actively market to, nor solicit sales from end-users," and that "[a]s of October 1st, 2001 [Mr. Fogle] instructed

VIII. BELLSOUTH'S ENTRY INTO THE INTERLATA MARKET IS NOT CONSISTENT WITH THE PUBLIC INTEREST.

There is a final, independent reason why the Commission should deny BellSouth's application. Even if the Commission could rationally find that BellSouth had fully implemented its obligations under the competitive checklist, the record here precludes any finding that granting BellSouth's application is "consistent with the public interest, convenience and necessity." 47 U.S.C. § 271(d)(3)(C).

The reason is straightforward. At the heart of the public interest inquiry, as Congress conceived it and as this Commission has explained, is a determination of whether, notwithstanding checklist compliance, the local market is in fact fully open to competition. The first step is to assess the actual state of local competition. Here, the record shows that competition is minimal, particularly in Louisiana. For example, barely 2/10 of 1 percent of the residential lines in BellSouth's Louisiana service territories are served by CLECs via facilities- or UNE-based service. The record confirms, moreover, that the absence of virtually *any* facilities or UNE-based residential competition is *not* the result of neutral business considerations uniquely within the control of new entrants, *Michigan 271 Order* ¶¶ 385-391, but is rather due to BellSouth's anticompetitive refusal to open the local residential markets in Georgia and Louisiana to competitors. Accordingly, approval of this joint application is not in the public interest.

The recent findings of the Texas Public Utility Commission ("TPUC") in its Report to the 77th Texas Legislature, "Scope of Competition in Telecommunications Markets in

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our sales personnel to discontinue distributing and discard the old sales material, and have altered our website to avoid any confusion."

Texas" (Jan. 2001) ("*TPUC Report*") (Attachment 1 hereto) – which BellSouth, ironically, touts in its application – underscore the adverse consequences that would result from premature interLATA authorization in Georgia and Louisiana. The *TPUC Report* makes clear that, a year after obtaining 271 authorization in Texas, (1) SWBT retains monopoly control of the residential local market in Texas, (2) CLEC competition for residential customers in Texas has faded, and (3) SWBT has extended its monopoly into the provision of bundled combinations of local and long distance services, thereby enabling it to raise its price for both residential and long distance service. If BellSouth were to receive interLATA authorization before opening its local markets in Georgia and Louisiana, the same anticompetitive results would occur in these states as well.

A. InterLATA Authorization Is Not In The Public Interest Unless BellSouth's Local Markets Are Irreversibly Open To Competition.

As a threshold matter, BellSouth invites the Commission to look no further than the competitive checklist in determining whether BellSouth's entrance into long distance would be consistent with the public interest. Application at 149-50. In BellSouth's view, the Commission should virtually presume that the public interest will be served by granting BellSouth's application, because (in BellSouth's view) such approval will spur competitors to enter the local market.

Any such presumption would conflict with the plain language of the statute, which puts the burden on the applicant to show that its entry would be "consistent with the public interest." *See Michigan 271 Order* ¶ 43 ("Section 271 places on the applicant the burden of proving that all of the requirements for authorization to provide in-region, interLATA services are satisfied"). Indeed, the Commission has flatly rejected the argument that the public interest

test can be satisfied by simply presuming that the benefits of additional entry into long distance will outweigh competitive harms arising from premature authorization:

> As we have previously observed, 'the entry of the BOC interLATA affiliates into the provision of interLATA services has the potential to increase price competition and lead to innovative new services and marketing efficiencies.' Section 271, however, embodies a congressional determination that, in order for this potential to become a reality, local telecommunications markets must first be open to competition so that a BOC cannot use its control over bottleneck local exchange facilities to undermine competition in the long distance market. Only then is the other congressional intention of creating an incentive or reward for opening the local exchange market met.

Id. at 388.

BellSouth invokes its improper presumption because it cannot justify premature long distance entry on the merits. The lessons from the experiences in Texas and the GTE territories are clear: allowing an incumbent LEC to provide interLATA services before local markets are open will not spur successful local competition. Gillan Decl. Table 8. If CLECs cannot profitably offer local residential service to customers, they cannot and will not effectively compete in local markets. That is true regardless of whether the incumbent has obtained long-distance authorization. *See id.*

Accordingly, the key question to be resolved in the public interest inquiry is whether the BOC's local markets truly "are open to competition" from new entrants. *See, e.g., Kansas/Oklahoma 271 Order* ¶ 267. Meeting the checklist requirements alone is merely a necessary, but is not a sufficient, predicate to demonstrating that local markets are in fact open. Section 271(d)(3) requires an additional and independent finding that entry is in the public interest. *E.g., Michigan 271 Order* ¶ 389. The public interest test reflects Congress's recognition that, at least in some circumstances, mere satisfaction of the checklist would not be

sufficient to allow local competition to develop, and that if the BOCs in those states nevertheless received long distance authority they would leverage their local monopoly into the long distance market – precisely the harm that the ban on interLATA service in section 271(a) is designed to prevent. *See Michigan 271 Order* ¶ 388 ("local telecommunications markets must *first* be open to competition so that a BOC cannot use its control over bottleneck local exchange facilities to undermine competition in the long distance market.") (emphasis added).

Thus, to determine whether the BOC's local telecommunications markets are in fact open to competition, the Commission first reviews the extent to which new entrants "are actually offering" local service to both business and residential customers through each of the three means offered by the Act. *Id.* ¶ 391. Second, where local competition is not securely established, the Commission determines whether this reflects the continuing presence of entry barriers and BOC misconduct, or is attributable instead solely to the business decisions of potential new entrants.

B. BellSouth Maintains Monopoly Power Over Residential Service.

The "Act contemplates three paths of entry into the local market – the construction of new networks, the use of unbundled elements of the incumbent's network, and resale," (*id.* ¶ 96). Congress "sought to ensure that all procompetitive entry strategies are available." *Id*. ¶ 387. As the Commission has recognized, its "public interest analysis of a section 271 application, consequently, *must* include an assessment of whether all procompetitive entry strategies are available to new entrants." *Id.* (emphasis added). And, as the Commission explained in the *Michigan 271 Order*, "[t]he most probative evidence that all entry strategies are available would be that new entrants *are actually offering* competitive local telecommunications services to different classes of customers (residential and business) through a variety of

arrangements (that is, through resale, unbundled elements, interconnection with the incumbent's network, or some combination thereof) in different geographic regions (urban, suburban, and rural) in the relevant state, and at different scales of operation (small and large)." *Id.* ¶ 391 (emphasis added). In subsequent applications, the Commission has repeatedly considered the degree to which competitors have actually succeeded in offering local telecommunications services using the different entry strategies prescribed by the Act. *See New York 271 Order* ¶¶ 13-14; *Texas 271 Order* ¶¶ 5-6.

Here, BellSouth's own data (which, as shown below, greatly inflate the amount of facilities-based competition) confirm that competitors have not yet been able significantly and irreversibly to enter the local residential market. In particular, those data show that BellSouth maintains a monopoly over residential service in its Georgia and Louisiana service territories. Using the E911 and UNE-P data presented by BellSouth witness Victor Wakeling, Tables 1, 2, 3 and 4 show the amount of CLEC competition BellSouth claims to exist in Georgia and Louisiana. The data in Table 2 show that, even based on BellSouth's data, there is insignificant competition for residential service in Georgia – little more than 3 percent of the residential lines in BellSouth's Georgia service territory are served by facilities-based competitors, and barely more than 1 percent of such lines are served by UNE-based competitors.[35] Table 4 shows that there is essentially *no* competition for residential service in Louisiana – a mere 835 lines or less than 1/10 of 1 percent of the residential lines in BellSouth's Louisiana service territory are served by facilities-based competitors and only 2/10 of 1 percent of such lines are served by UNE-based competitors.

[35] The bulk of the facilities-based lines identified by BellSouth appear to be limited to cable customers in the Atlanta metropolitan area.

TABLE 1: Total CLEC Penetration in BellSouth's Georgia Service Territory

	Quantity	**Share**
BellSouth Retail Switched Access Lines (Wakeling Aff., Table 2)	4,060,844	83.6%
CLEC Facilities-Based Lines (Wakeling Aff., Ex. VW-14)	553,730	11.4%
CLEC UNE-P Lines (Wakeling Aff., Ex. VW-14)	144,420	3.0%
CLEC Resale Lines (Wakeling Aff., Ex. VW-8)	100,015	2.1%
Total Lines in BellSouth Georgia Service Territory (Wakeling Aff., Table 2)	**4,859,009**	**100.0%**

TABLE 2: Residential Market CLEC Penetration in BellSouth's Georgia Service Territory

	Quantity	**Share**
BellSouth Retail Residential Switched Access Lines (Wakeling Aff. Table 2)	2,619,198	91.3%
CLEC Residential Facilities-Based Lines (Wakeling Aff. Ex. VW-14)	101,882	3.6%
CLEC Residential UNE-P Lines (Wakeling Aff. Ex. VW-14)	74,666	2.6%
CLEC Residential Resale Lines (Wakeling Aff. Ex. VW-8)	73,369	2.6%
Total Residential Lines in BellSouth Georgia Service Territory (Wakeling Aff. Ex. 2)	**2,869,115**	**100.0%**

TABLE 3: Total CLEC Penetration in BellSouth Louisiana Service Territory

	Quantity	**Share**
BellSouth Retail Switched Access Lines (Wakeling Aff. Table 4)	2,333,635	91.9%
CLEC Facilities-Based Lines (Wakeling Aff. Ex. VW-15)	104,631	4.1%
CLEC UNE-P Lines (Wakeling Aff. Ex. VW-15)	14,964	0.6%
CLEC Resale Lines (Wakeling Aff. Ex. VW-9)	85,321	3.4%
Total Lines in BellSouth Louisiana Service Territory (Wakeling Aff. Table 4)	**2,538,551**	**100.0%**

TABLE 4: Residential Market CLEC Penetration in BellSouth Louisiana Service Territory

	Quantity	**Share**
BellSouth Louisiana Retail Residential Switched Access Lines (Wakeling Aff. Table 4)	1,603,488	96.1%
CLEC Residential Facilities-Based Lines (Wakeling Aff. Ex. VW-15)	865	0.0%
CLEC Residential UNE-P Lines (Wakeling Aff. Ex. VW-15)	3,527	0.2%
CLEC Residential Resale Lines (Wakeling Aff. Ex. VW-9)	60,367	3.6%
Total Residential Lines in BellSouth Louisiana Service Territory (Wakeling Aff. Table 4)	**1,668,247**	**100.0%**

Moreover, BellSouth's data *overestimate* the amount of CLEC facilities-based competition for average consumers, including both residential and small business customers. Gillan Decl. ¶¶ 18-27. Significantly, BellSouth ignores the most direct measure available to evaluate such facilities-based competition – *i.e.*, the traffic on the interconnection facilities

between BellSouth and CLEC networks as measured by minutes of use. This measure is particularly useful, because it provides insight not only into the competitive *penetration* achieved by facilities-based entrants, but also into the *types* of consumers such competitors have attracted. Strikingly, throughout the BellSouth territory, CLECs' *terminating* minutes of use constitute 84 to 95 percent of CLECs' total traffic in each BellSouth state. *Id.* Table 4. The likely explanation for this phenomenon is that the vast bulk of CLEC traffic is for Internet Service Providers (ISPs)– *not* the conventional customers who represent the core of BellSouth's local monopoly. *Id.* ¶ 21. When ISP lines are eliminated, the number of facilities-based lines served by BellSouth in Georgia is reduced to about 132,000 (compared to over 550,000 by Mr. Wakeling's count) and about 42,000 in Louisiana (compared to over 100,000 according to Mr. Wakeling). *Id.* Table 6.[36]

In addition, as the tables set forth in Attachments 2 and 3 hereto show, many of the facilities-based CLECs that BellSouth identifies as its competitors in Georgia and Louisiana,[37] have gone, or are going, out of business or are otherwise in financial distress. Moreover, a recent study indicates that all across the country CLEC market shares are *decreasing* (from 8.5 percent to 7.6 percent) due to CLECs' financial difficulties.[38]

The prospects for increased UNE-based competition are also bleak. If BellSouth actually offered CLECs non-discriminatory access to the full economies of scale in its existing network, the Commission should see meaningful entry by and increasing competition from

[36] BellSouth also significantly overstates CLEC entry by excluding from its analyses special access lines. *Id.* ¶ 29. If these lines were included, even using BellSouth's count of facilities-based lines, it would, for example, reduce CLECs' overall penetration rate in Georgia from about 16.5 percent (*see* Table 1 above) to 9.7 percent. Gillan Decl. Table 7.

[37] Wakeling Aff. Ex. VW-6 (Georgia); VW-7 (Louisiana).

[38] Legg Mason Equity Research, *Telephone wars: Local Competition Update* (May 22, 2001).

UNE-based entrants. Yet, since the passage of the Act, all CLECs combined in Georgia and Louisiana have managed to gain just over 260,000 UNE-based lines, while BellSouth has added 4.9 *million* lines in roughly the same period. Gillan Decl. ¶ 17. The microscopic level of UNE-platform-based entry in Louisiana, in particular, is significantly smaller than the level achieved in other states in which the Commission has granted section 271 applications. As reflected in Table 5, the current level of UNE-based competition for residential service in BellSouth's service territory is less than 3 percent of the levels of UNE-based residential competition that existed in New York and Texas at the time the Commission considered section 271 applications for those states.

TABLE 5: COMPARISON OF UNE-BASED RESIDENTIAL SERVICE LEVELS IN LOUISIANA, NEW YORK AND TEXAS (number of UNE-based residential lines)

	LOUISIANA	NEW YORK	TEXAS
LINES AT TIME OF 271 APPLICATION	3,527[39]	137,342[40]	236,000[41]

Finally, much of the residential "competition" in Georgia and virtually *all* of the residential "competition" in Louisiana is resale. This is an inherently limited competitive vehicle, however, both because resale-based competitors cannot alter the nature of the service they are reselling (and thus cannot provide consumers with innovative or improved services), and

[39] Wakeling Aff. Ex. VW-15.

[40] *New York 271 Order* ¶ 14.

[41] Based on information contained in the Supplemental Affidavit of SWBT witness John S. Habeeb filed in CC Docket No. 00-4 on April 5, 2000, CLECs in Texas provided UNE-P based service to 119,871 residential customers and 83,301 business customers as of February 2000. Supplemental Declaration of A. Daniel Kelley and Steven E. Turner on Behalf of AT&T Corp., Table 2, filed in FCC CC Docket No. 00-65 on April 26, 2000. Accordingly, based on SWBT's own data, about 59 percent of the UNE-P service in its Texas service territory was provided to residential customers as of February 2000. SWBT reports that, as of the time of the Commission's June 30, 2000 *Texas 271 Order*, there were 472,249 UNE-P customers in Texas. *See* SBC Public Affairs Report accessed on April 23, 2001 on SBC's web-site at www.sbc.com/Long-Distance/0,2951,7,00.html. Assuming about half of these lines served residential customers yields a total of about 236,000 residential UNE-P customers.

because resale is priced in a manner that precludes its use in all but the most selectively chosen circumstances.[42] Not surprisingly, therefore, resale competition is eroding precipitously – declining by over 30 percent in Georgia and by over 18 percent in Louisiana since December 2000. Gillan Decl. Table 2.

C. BellSouth's Local Residential Markets Remain Closed To UNE- and Facilities-Based Competition Due To Entry Barriers And BellSouth's Own Actions.

Because the relevant data show a lack of meaningful local competition, the Commission must next determine "whether the lack of competitive entry is due to the BOC's failure to cooperate in opening its network to competitors, the existence of barriers to entry, the business decisions of potential entrants, or some other reason." *Michigan 271 Order* ¶ 391. To make this determination, the Commission should consider all "relevant factors" that might "frustrate congressional intent that markets be open [to competition]." *Kansas/Oklahoma 271 Order* ¶ 267. A review of the evidence makes clear that entry barriers and BellSouth's own actions have perpetuated its monopoly over residential service in Georgia and Louisiana.

As explained more fully above, BellSouth continues to discriminate against CLECs in the provision of UNEs in ways that directly impair CLECs' ability to compete. *See supra*. Similarly, BellSouth has failed to establish reliable performance measures and an effective enforcement plan, both of which are crucial to the ability and willingness of new

[42] The avoided cost discount has proved inadequate to provide CLECs a basis for profitable entry for most consumers. For example, as monopolists, the incumbents do not face (and therefore do not "avoid") the huge customer acquisition costs that CLECs confront, nor do they face the lack of economies of scale that a new entrant must address. And CLECs providing resale do not benefit from access revenue. For all of these reasons, CLECs seeking to provide a broad-based, significant competitive alternative to the incumbents' local residential monopoly cannot do so through the resale of local service.

entrants, particularly UNE-based competitors, to incur the substantial investment required to enter a BOC's local market, as well as to the continuing viability of competition once entry has occurred. *E.g., Michigan 271 Order* ¶¶ 393-94. Indeed, BellSouth has compounded this failure by gaming the performance measurement process in order to disguise its OSS deficiencies.

In addition, BellSouth's UNE rates are not remotely TELRIC compliant, and include pricing disparities of the type and magnitude that foreclose widespread competition. *See supra;* Lieberman Decl. ¶¶ 12-27; Clarke Decl. ¶¶ 5-26. As AT&T's margin analysis confirms, local entry is unprofitable in Louisiana at prevailing UNE rates. *See* Lieberman Decl. ¶¶ 26-27. This is precisely the sort of "relevant factor" that "would frustrate the congressional intent that markets be open" before interLATA entry is approved, *New York 271 Order* ¶ 423, particularly since it is obvious that local entry "is vitally dependent on appropriate pricing" of UNEs. *Michigan 271 Order* ¶ 281. It also illustrates why checklist compliance alone does not establish that the public interest will be served by the incumbent's entry into the interLATA market.

Entry into BellSouth's local market, under current competitive conditions, would be difficult for other RBOCs and, at best, less financially rewarding than simply maintaining their local monopolies in their home service regions. Although the lack of non-local RBOC entry is common throughout the country, it appears that Qwest's decision not to compete in BellSouth's local markets was the subject of an *agreement not to compete.* In April 1999, BellSouth and Qwest issued a press release announcing that BellSouth had purchased a 10 percent interest in Qwest, and that the companies had formed a "strategic relationship" whereby they would begin coordinated marketing of their services.[43] More recent public statements,

[43] *See* April 20, 1999, Qwest Press Release, "BellSouth and Qwest Announce Investment and Strategic Relationship."

however, have made clear that this "strategic relationship" includes an agreement that Qwest will not compete for business customers in BellSouth's region.[44] Thus, BellSouth has not been content merely to maintain the substantial barriers to entry to its local markets. It has reinforced those barriers with an anticompetitive agreement further to discourage Qwest from competing in BellSouth local markets.

In sum, the lack of CLEC competition for residential service is due to BellSouth's "failure to cooperate in opening its network to competitors" and the "existence of barriers to entry," *not* "the business decisions of potential entrants" that are independent of the entry barriers and BOC misconduct. *Michigan 271 Order* ¶ 391. Nothing suggests that potential entrants have decided that the Georgia and Louisiana markets, though open, are simply not worth pursuing, or "that competitive alternatives can flourish rapidly throughout [either] state." *Michigan 271 Order* ¶ 392. The local markets in Georgia and Louisiana are simply not open to competition, let alone irretrievably open.

D. The TPUC Local Competition Report Confirms Congress' Judgment That Approving a Section 271 Application Before Local Markets Are Open Will Not Produce Successful Local Competition.

The rosy picture that BellSouth paints of flourishing local competition in Texas stands in stark contrast to the January 2001 *TPUC Report*, which reveals that:

- "monopoly power exists . . . in residential and rural markets in Texas" (*id.* at 83; *see* xiii);
- severe financial problems have caused both large and small CLECs to reduce or eliminate their residential service in Texas (*id.* at 55-58, 80-81);
- this lack of competition has permitted SWBT to extend its monopoly into the provision of bundled combinations of local and long distance services, and to

[44] *Rocky Mountain News*, August 8, 2001.

raise its prices for local services to both residential and business customers (*id.* at x, 62-64, 79, 81);[45] and, given this monopoly power,

- "residential and rural customers are better served by existing price cap regulation of traditional nonbasic local service until more viable and sustainable competitive choices become available to them."[46]

Although BellSouth trumpets the alleged competition currently being provided by, in particular, AT&T, WorldCom and Sprint (Application at 154-157), the *TPUC Report* describes in detail how all three companies have recently *reduced* their presence in residential voice markets in Texas and de-emphasized local exchange service in the state. *TPUC Report* at 58-61. The *TPUC Report* also describes in detail how the stock market's recognition of the continuing barriers to profitable CLEC service have caused many competitors to reduce or eliminate their residential service in Texas. *Id.* at 56-57.

Contrary to BellSouth's claims of falling prices, the TPUC describes how declining CLEC competition has permitted SWBT to "*significantly* increase[] the prices for a number of nonbasic services, often services that are very popular," and often by as much as 50 to 100 percent. *Id.* at 62-63 (emphasis added); *see also id.* at 79.[47] The *TPUC Report* also makes clear that SWBT has begun to extend its monopoly in the provision of residential services into the provision of "bundled" combinations of local and long distance services, thereby gaining "a sizeable portion of the long distance market just months after offering long distance service." *Id.*

[45] As described below, SWBT has also recently raised its rates for long distance service.

[46] *Id.* at ix.

[47] The declining competition from CLECs in Texas and elsewhere has also permitted ILECs to slow down their roll-outs of DSL services. "CLEC Aftermath: Will DSL Become Another BOC Monopoly As Competitive Carriers Die Out," *America's Network*, at 34 (April 1, 2001).

at x.[48] Of crucial importance, the TPUC found that "SWBT's entry into the long distance market has weakened the ability of CLECs to challenge SWBT in local voice service," and allowed SWBT to raise prices in both markets. *Id*. at 81.

Indeed, as if to provide further confirmation of the TPUC's findings, SWBT raised its residential long distance rates in Texas in February 2001 by 10 to 33 percent, including an increase in basic rates for long-distance service of more than 10 percent.[49] The rate increase "'highlights the fact that SWBT feels like they are in control and they can set the price,'" said an analyst with Deutsche Banc, Alex Brown.[50] More recently, SWBT boasted that, with even higher long distance rates in Oklahoma and Kansas, it was achieving market shares for its bundled long distance service comparable to the shares it had initially achieved in Texas with lower entry prices.[51] SWBT's long distance price *increase* in Texas and its ability to sustain still higher long distance rates in Oklahoma and Kansas, belie BellSouth's claim that its entry into long distance will lead to long distance price cutting.[52]

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[48] *See also id*. at 79 ("SB 560 also granted SWBT the ability to competitively bundle its products. An important additional piece in SWBT's 'one-stop' shopping strategy was SWBT's receiving a favorable recommendation from the Commission on its Section 271 application, leading to FCC approval for SWBT to offer long distance service in Texas in the second half of 2000. SWBT at present has very limited competition in providing bundled services in Texas").

[49] "SWBT Raises Nonlocal Call Rates: Company Says Prices Better Reflect Costs," *The Dallas Morning News,* February 2, 2001.

[50] *Id.*

[51] "SBC Finds Demand Not Dampened By Higher Long Distance Rates," *TR Daily*, July 25, 2001.

[52] Application at 151-53. BellSouth nowhere mentions in its voluminous pleadings that, since the beginning of 1999, intrastate access charges in Texas have been cut by 3.9 cents, and intrastate access rates were slashed an additional two cents per minute after SWBT's entry into long distance. Thus, in large part, the long distance price-cutting BellSouth attributes to SWBT's entry into long distance simply reflected the flowing through of access rate cuts.

In sum, recent events in Texas demonstrate precisely the danger of premature long distance authorization: If evidence of a closed local market is ignored on the theory that interLATA authorization will prompt competition, consumers will pay a heavy price in the form of re-monopolization and higher prices. Indeed, the outcome in Georgia and Louisiana, if BellSouth's application were granted, would undoubtedly be far worse than in Texas. For in Texas, numerous competitors have made enormous sunk investments in an effort to make local residential competition a reality. There is far less sunk investment in Georgia and almost none in Louisiana. In these circumstances, BellSouth's monopoly over bundled services in Georgia and Louisiana would be invulnerable to competitive challenge from day one. And, as in Texas, once BellSouth's unique bundle of local and long distance services is available, consumers in Georgia and Louisiana could expect quickly to see the price of that service rise. To avoid re-monopolization, the Commission should deny BellSouth interLATA authorization until it truly opens its local markets to competition, so that numerous competitors can offer consumers the benefits both of one-stop shopping and of a competitive marketplace.

E. BellSouth's Performance Monitoring And Enforcement Plans Are Wholly Inadequate To Prevent Backsliding.

Although a BOC's current compliance with the checklist and a finding that local markets, under current conditions, are open to full and fair competition are necessary conditions to a finding that section 271 authority is in the public interest, they are not *sufficient* conditions. Rather, there must also be assurances that there will be no "backsliding" on the part of the BOC. For that reason, the Commission has recognized that a BOC's performance monitoring and

enforcement plan can "constitute probative evidence that the BOC will continue to meet its Section 271 obligations and that its entry would be consistent with the public interest."[53]

The principal purpose of an anti-backsliding plan is to provide sufficient incentives for a BOC to continue providing CLECs the nondiscriminatory support that is required after a section 271 application is granted. After a BOC is authorized under section 271 to provide long distance services, it will no longer have the powerful business incentives provided by the lure of section 271 approval to provide nondiscriminatory support for CLECs. The BOC instead will have powerful incentives to take advantage of its position as the supplier of facilities and services essential to competitors to drive those competitors out of both the local and long distance markets.[54] This problem is especially troublesome because, after section 271 authority is granted, the BOC can provide a full array of local and long distance services through the well established "PIC change" process, while CLECs cannot provide local and long distance services to their customers without substantial reliance on the BOC's support systems and processes.

A properly designed and implemented anti-backsliding plan is thus extremely important. And, in order to offset the anticompetitive incentives that are inherent in the BOC's position with incentives to provide nondiscriminatory performance for CLECs, an anti-backsliding plan must have sufficient and definite monetary consequences to preclude the BOC

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[53] *Id.* ¶ 429.

[54] BellSouth's CEO Duane Ackerman has predicted that if BellSouth is permitted to provide in-region, interLATA services, BellSouth will quickly accumulate market share "in the 25 to 30% market share range," with a "quick couple of billion flowing to the bottom line as profit." *See* "BellSouth Remains Confident, But Cautious About Growth," *Atlanta Journal Constitution*, June 3, 2001.

from rationally concluding that it stands to gain more by discriminating and paying the consequences under the remedy plan than by competing in a fair manner on a level playing field.

As the Commission explained in its *Michigan 271 Order*, to provide the most effective possible deterrent against discriminatory performance after a section 271 application is granted, an anti-backsliding plan should include "appropriate, self-executing enforcement mechanisms that are sufficient to ensure compliance with the established performance standards."[55] To meet this standard, an anti-backsliding plan must have sufficient monetary consequences to dissuade the BOC from exercising its natural incentives to leverage its monopoly power in the local market, together with its position as the primary supplier of wholesale inputs to CLECs, to harm competition in both the local and long distance markets. In addition, in order to serve as an effective deterrent, the consequences of discriminatory performance must be direct and unambiguous, and those consequences should be essentially self-executing and as immediate as possible. In that connection, the Commission has emphasized the importance of remedial measures that are "automatically triggered" by noncompliant conduct:

> [A]s part of our public interest inquiry, we would want to inquire whether the BOC has agreed to private and *self-executing enforcement mechanisms* that are automatically triggered by noncompliance with the applicable performance standard without resorting to lengthy regulatory or judicial intervention. The absence of such enforcement mechanisms could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent.[56]

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[55] *Michigan 271 Order* ¶ 394. *See also Louisiana II Order* ¶ 364; Evaluation of U.S. Dept. of Justice of Ameritech Michigan Section 271 Application, pp. 38-40 (June 25, 1997).

[56] *Michigan 271 Order* ¶ 394.

In its *New York 271 Order*, the Commission identified the five key elements in a performance monitoring and enforcement plan that would support a showing "that markets will remain open after grant of the application": (i) potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; (ii) clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (iii) a reasonable structure that is designed to detect and sanction poor performance when it occurs; (iv) a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (v) reasonable assurances that the reported data is accurate. *New York 271 Order* ¶¶ 433, 435.

BellSouth claims that its Georgia "SEEM" plan — which it asserts "was developed over several years in workshops with the CLECs" — satisfies all of the key criteria identified by this Commission in its *New York 271 Order*. Varner (GA) Aff. ¶ 301. *See also id.* ¶ 303. That assertion is clearly false.

BellSouth's Georgia SEEM contains so many fundamental structural flaws that it does not provide any meaningful protection against discriminatory conduct by BellSouth. Most fundamentally, the Georgia SEEM is a transaction-based plan that permits BellSouth to avoid experiencing any financial consequence for performance failures and otherwise generates insufficient remedies to deter noncompliant conduct. Bursh/Norris Decl. ¶¶ 130-147. The affected transactions as to which BellSouth would be subject to penalties are reduced in significant measure through sleight-of-hand in the various methodologies in the Georgia SEEM that are used to calculate remedy payments. As a result, BellSouth will suffer only minimal exposure for even significant and prolonged performance failures.

Numerous additional flaws also independently render SEEM ineffective in preventing backsliding. The Georgia SEEM contains an absolute cap that limits BellSouth's potential liability and, therefore, reduces any incentive to comply with performance standards. *Id.* ¶ 127. Further, as the Bursh/Norris Declaration explains (¶ 134-147), the various methodologies in the Georgia SEEM, including the aggregation of sub-measures, delta value, and Benchmark Adjustment Table, systematically limit BellSouth's potential liability by reducing the number of transactions for which BellSouth will be subject to remedies.[57] Similarly, the Georgia SEEM excludes a host of performance measurements that are essential to the development of competition in local markets. *Id*. Because the Georgia SEEM excludes these measures, BellSouth will experience no financial consequences for plainly discriminatory conduct in these areas. *Id.* ¶¶ 148-158.

In all events, reliance on the Georgia SEEM is premature because the audit of the performance measurement is not yet complete. *Id.* ¶ 125. Rather, the plan is based on a performance measurement plan and data that have not been verified with respect to accuracy and completeness.

The Louisiana SEEM plan is patterned on the Georgia SEEM and, therefore, suffers from these same deficiencies identified in the accompanying Bursh/Norris Declaration. One troubling difference is the parameter delta value of 1.00 (Tier I) and .50 (Tier II) which allows even more Louisiana CLEC customers to experience bad service without any

[57] As explained by Dr. Bell (¶¶ 67-82), there are numerous other improvements that must be implemented to the performance measurement plans in Georgia and Louisiana. First, the remedy plan should address the fact that its truncated z-statistic improperly aggregates cells in a way that could conceal discrimination. *See id*. Second, the parameter delta value should be lower to ensure parity. *See id.* Third, the remedy plan should calculate the remedy gap in a way that penalizes BellSouth based on how far it stays from providing parity of performance. *See id*.

consequence to BellSouth. Just as its Georgia counterpart, the Louisiana SEEM has greatly limited the performance measures that might trigger liability and uses a series of gimmicks to reduce the penalties that might accrue. *Id.* ¶¶ 159-162.

CONCLUSION

For the reasons stated above, AT&T respectfully submits that BellSouth's Joint Application for Georgia and Louisiana should be denied.

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